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MATT BLUNT

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MISSOURI



REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule.

FROM THIS ANGLE . . .

Welcome new associate editor

We are pleased to welcome Tiffany Davis to the Administrative Rules team. Tiffany is the new associate editor for both *Code* and *Register*. She joins Barb, Jim, Curtis and Sally in making certain your rules, as published, are in accurate form. When you are in the office, allow us to introduce you to Tiffany.

Transmittals

We are still encountering the utilization of the wrong transmittal form. Please be sure you are currently utilizing the proper transmittal form for all of your rule filings. If you are unsure if you are utilizing the proper form, please give us a call and we will send you a copy — either electronic or paper, whichever you prefer.

Rulemaking Manual

Do you have your new and improved rulemaking manual? Due to budgetary constraints, we are only able to provide one per agency; however, we want to be certain that all who truly need a manual have received a copy of the same. If you need a manual, please contact our office at 573-751-4015.

Rulemaking Classes

Our rulemaking classes continue to be well received. Please remember if your agency feels a need for either an informal session on a specific type of rulemaking — or you wish a full class covering specific types of rulemakings, we are pleased to offer those to your agency.

Delegation of Authority — Signatures, Cover Letters and Affidavits

Please remember to return your letter and listing of those persons to whom rulemaking authority is delegated for your agency. You should have received a letter from our office in September, setting forth this request and the parameters for rulemaking delegation. Remember, this will extend to all

phases of rulemaking — from cover letter to affidavit. If we do not have your properly executed delegation of authority signed by your department director on file with our office, your filing can and will be refused. This is a very important component of the rulemaking process.

Have you considered . . . ?

When making very extensive revisions to your rules, you may wish to consider filing a rescission and new proposed rule. When there are extensive changes to a rule, it often makes for a cleaner and clearer set of documents to simply file a rescission and new proposed rule, rather than utilizing all of the bolds, brackets and very extensive changes to the original rule as a proposed amendment. Please call if you have questions or if we may assist you with this type of revision.

We hope you are all enjoying a Happy New Year and trust you will contact us if we can be of any assistance to you.



Lynne C. Angle
Director, Administrative Rules Division

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the Missouri and the United States Constitutions; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the Missouri Register as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.200 Purpose and Structure. This rule describes the purpose of the Certificate of Need (CON) statute and the structure of the Missouri Health Facilities Review Committee.

PURPOSE: *This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.*

EMERGENCY STATEMENT: *This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.*

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary

for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering the same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.200 Purpose and Structure

PURPOSE: *This rule describes the purpose of the Certificate of Need (CON) statute and the structure of the Missouri Health Facilities Review Committee.*

EMERGENCY STATEMENT: *This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.*

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) The Certificate of Need (CON) statute, sections 197.300–197.366, RSMo became effective September 28, 1979, except those sections which were not effective until October 1, 1980 or later. CON had its origin in the federal Public Law 93-641, 1974, and was initially intended to address issues of need, cost, and distribution of health services, as well as other factors which impact the health of the population.

(2) The purpose of the CON statute is to achieve the highest level of health for Missourians through cost containment, reasonable access, and public accountability. The goals are to:

- (A) Review proposed health care services;
- (B) Contain health costs;
- (C) Promote economic value;
- (D) Negotiate competing interests;
- (E) Prevent unnecessary duplication; and
- (F) Disseminate health-related information to interested and affected parties.

(3) The CON statute is administered by the nine (9)-member Missouri Health Facilities Review Committee (committee). Five (5) members are appointed by the governor, two (2) by the president pro tem of the senate, and two (2) by the speaker of the house, each serving two (2)-year terms or until replaced.

(4) On behalf of the committee, the CON Program provides technical and administrative services as shown in Rule 19 CSR 60-50.900.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSION

19 CSR 60-50.300 Definitions for the Certificate of Need Process. This rule defined the terms used in the Certificate of Need (CON) review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1999. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency amendment filed Oct. 20, 1998, effective Oct. 30, 1998, expired April 27, 1999. Amended: Filed Oct. 20, 1998, effective April 30, 1999. Amended: Filed Jan. 4, 2000, effective July 30, 2000. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RULE

19 CSR 60-50.300 Definitions for the Certificate of Need Process

PURPOSE: This rule defines the terms used in the Certificate of Need (CON) review process.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) Applicant means all owner(s) and operator(s) of any new institutional health service.

(2) By or on behalf of a health care facility includes any expenditures made by the facility itself as well as capital expenditures made by other persons that assist the facility in offering services to its patients/residents.

(3) Cost means:

(A) Price paid or to be paid by the applicant for a new institutional health service to acquire, purchase or develop a health care facility or major medical equipment; or

(B) Fair market value of the health care facility or major medical equipment as determined by the current selling price at the date of the application as quoted by builders or architects for similar facilities or normal suppliers of the requested equipment.

(4) Construction of a new hospital means the establishment of a newly-licensed facility at a specific location under the Hospital Licensing Law, section 197.020.2, RSMo, as the result of building, renovation, modernization, and/or conversion of any structure not licensed as a hospital.

(5) Expedited application means a shorter than full application and review period as defined in 19 CSR 60-50.420 and 19 CSR 60-50.430 for any long-term care expansion or replacement as defined in section 197.318.8-10, long-term care renovation and modernization, or the replacement of any major medical equipment as defined in section (11) of this rule which holds a Certificate of Need (CON) previously granted by the Missouri Health Facilities Review Committee (committee). Applications for replacement of

major medical equipment not previously approved by the committee should apply for a full review.

(6) Generally accepted accounting principles pertaining to capital expenditures include, but are not limited to—

(A) Expenditures related to acquisition or construction of capital assets;

(B) Capital assets are investments in property, plant and equipment used for the production of other goods and services approved by the committee; and

(C) Land is not considered a capital asset until actually converted for that purpose with commencement of above ground construction approved by the committee.

(7) Health care facility means those described in section 197.366, RSMo.

(8) Health care facility expenditure includes the capital value of new construction or renovation costs, architectural/engineering fees, equipment not in the construction contract, land acquisition costs, consultants'/legal fees, interest during construction, predevelopment costs as defined in section 197.305(13), RSMo, in excess of one hundred fifty thousand dollars (\$150,000), any existing land and building converted to medical use for the first time, and any other capitalizable costs as listed on the "Proposed Project Budget" form MO 580-1863.

(9) Health maintenance organizations means entities as defined in section 354.400(10), RSMo, except for activities directly related to the provision of insurance only.

(10) Interested party means any licensed health care provider or other affected person who has expressed an interest in the Certificate of Need (CON) process or a CON application.

(11) Major medical equipment means any piece of equipment and collection of functionally related devices acquired to operate the equipment and additional related costs such as software, shielding, and installation, with an aggregate cost of one (1) million dollars or more, when the equipment is intended to provide the following services:

(A) Cardiac Catheterization;

(B) CT (Computed Tomography);

(C) Gamma Knife;

(D) Hemodialysis;

(E) Lithotripsy;

(F) MRI (Magnetic Resonance Imaging);

(G) PET (Positron Emission Tomography);

(H) Linear Accelerator;

(I) Open Heart Surgery;

(J) EBCT (Electron Beam Computed Tomography);

(K) PET/CT (Positron Emission Tomography/Computed Tomography); or

(L) Evolving Technology.

(12) Nonsubstantive project includes, but is not limited to, at least one (1) of the following situations:

(A) An expenditure which is required solely to meet federal or state requirements or involves predevelopment costs or the development of a health maintenance organization;

(B) The construction or modification of nonpatient care services, including parking facilities, sprinkler systems, heating or air-conditioning equipment, fire doors, food service equipment, building maintenance, administrative equipment, telephone systems, energy conservation measures, land acquisition, medical office buildings, and other projects or functions of a similar nature; or

(C) Expenditures for construction, equipment, or both, due to an act of God or a normal consequence of maintenance, but not replacement, of health care facilities, beds, or equipment.

(13) Offer, when used in connection with health services, means that the applicant asserts having the capability and the means to provide and operate the specified health services.

(14) Predevelopment costs mean expenditures as defined in section 197.305(13), RSMo, including consulting, legal, architectural, engineering, financial and other activities directly related to the proposed project, but excluding the application fee for submission of the application for the proposed project.

(15) Related organization means an organization that is associated or affiliated with, has control over or is controlled by, or has any direct financial interest in, the organization applying for a project including, without limitation, an underwriter, guarantor, parent organization, joint venturer, partner or general partner.

(16) Service area means a geographic region appropriate to the proposed service, documented by the applicant and approved by the committee.

(17) The most current version of Form MO 580-1863 may be obtained by mailing a written request to the Certificate of Need Program (CONP), 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the form from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency amendment filed Oct. 20, 1998, effective Oct. 30, 1998, expired April 27, 1999. Amended: Filed Oct. 20, 1998, effective April 30, 1999. Amended: Filed Jan. 4, 2000, effective July 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.310 Guidelines for Specific Health Services. This rule defined specific health services subject to the Certificate of Need (CON) review process.

PURPOSE: *This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.*

EMERGENCY STATEMENT: *This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.*

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1999. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective May 30, 2000. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.400 Letter of Intent Process. This rule delineated the process for submitting a Letter of Intent to begin the Certificate of Need (CON) review process and outlined the projects subject to CON review.

PURPOSE: *This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.*

EMERGENCY STATEMENT: *This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.*

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the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1998. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency amendment filed Nov. 16, 1995, effective Nov. 26, 1995, expired May 23, 1996. Amended: Filed Nov. 15, 1995, effective April 30, 1996. Emergency rescission filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, terminated Sept. 21, 1997. Emergency rule filed Sept. 11, 1997, effective Sept. 21, 1997, expired March 19, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed recession covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.400 Letter of Intent Process

PURPOSE: This rule delineates the process for submitting a Letter of Intent to begin the Certificate of Need (CON) review process and outlines the projects subject to CON review.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and

the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) Applicants shall submit a Letter of Intent (LOI) package to begin the Certificate of Need (CON) review process at least thirty (30) days prior to the submission of the CON application and will remain valid in accordance with the following time frames:

(A) For full reviews, expedited equipment replacements, expedited long-term care (LTC) renovation or modernization reviews and expedited LTC facility replacement reviews, an LOI is valid for six (6) months;

(B) For expedited LTC bed expansion reviews in accordance with section 197.318.8, an LOI is valid for twenty-four (24) months; and

(C) For non-applicability reviews, an LOI is valid for six (6) months.

(2) Once filed, an LOI may be amended, except for project address, not later than ten (10) days in advance of the CON application filing, or it may be withdrawn at any time without prejudice.

(3) A LTC bed expansion or replacement as defined in these rules includes all of the provisions pursuant to section 197.318.8 through 197.318.10, RSMo, requiring a CON application, but allowing shortened information requirements and review time frames. When an LOI for an LTC bed expansion, except replacement(s), is filed, the CONP staff shall immediately request certification for that facility of average licensed bed occupancy and final Class 1 patient care deficiencies for the most recent six (6) consecutive calendar quarters by the Division of Health Standards and Licensure (DHSL), Department of Health and Senior Services, through an LTC Facility Expansion Certification (Form MO 580-2351) to verify compliance with occupancy and deficiency requirements pursuant to section 197.318.8, RSMo. Occupancy data shall be taken from the DHSL's most recently published Quarterly Survey of Hospital and Nursing Home (or Residential Care Facility) Bed Utilization reports. For LTC bed expansions or replacements, the sellers and purchasers shall be defined as the owner(s) and operator(s) of the respective facilities, which includes building, land, and license. On the Purchase Agreement (Form MO 580-2352), both the owner(s) and operator(s) of the purchasing and selling facilities should sign.

(4) The Certificate of Need Program (CONP) staff, as an agent of the Missouri Health Facilities Review Committee (committee), will review LOIs according to the following provisions:

(A) Major medical equipment is reviewed as an expenditure on the basis of cost, regardless of owners or operators, or location (mobile or stationary);

(B) The CONP staff shall test the LOI for applicability in accordance with statutory provisions for expenditure minimums, exemptions, and exceptions;

(C) If the test verifies that a statutory exception or exemption is met on a proposed project, or is below all applicable expenditure minimums, the committee chair may issue a Non-Applicability CON letter indicating the application review process is complete; otherwise, the CONP staff shall add the proposal to a list of Non-Applicability proposals to be considered at the next regularly scheduled committee meeting;

(D) If an exception or exemption is not met, and if the proposal is above any applicable expenditure minimum, then a CON application will be required for the proposed project;

(E) A Non-Applicability CON letter will be valid subject to the following conditions:

1. Any change in the project scope, including change in type of service, cost, operator, ownership, or site, could void the effectiveness of the letter and require a new review; and

2. Final audited project costs must be provided on a Periodic Progress Report (Form MO 580-1871);

(F) A CON application must be made if:

1. The project involves the development of a new health care facility costing in excess of one (1) million dollars;

2. The project involves the acquisition or replacement of major medical equipment in any setting not licensed under Chapter 198, RSMo, costing in excess of one (1) million dollars;

3. The project involves the acquisition or replacement of major medical equipment for a health care facility licensed under Chapter 198, RSMo, costing in excess for four hundred thousand dollars (\$400,000);

4. The project involves the acquisition of any equipment or beds in a long-term care hospital meeting the requirements found in 42 CFR section 412.23(e) at any cost;

5. The project involves a capital expenditure, but not additional beds, by or on behalf of an existing health care facility licensed under Chapter 198, RSMo, costing in excess of one (1) million dollars; or

6. Prior to January 1, 2003, the project involves additional long term care (licensed or certified residential care facility I or II, intermediate care facility, or skilled nursing facility) beds or LTC bed expansions or replacements as defined in section (3) above of this rule, regardless of cost, with certain exemptions and exceptions.

(5) For an LTC bed expansion proposal pursuant to section 197.318.8(1)(e), RSMo, the CONP staff shall request occupancy verification by the DHSL who shall also provide a copy to the applicant.

(6) Nonsubstantive projects are waived from review by the authority of section 197.330.1(8), RSMo, and any projects seeking such a determination shall submit information through the LOI process; those meeting the nonsubstantive definition shall be posted for review on the CON web site at least twenty (20) days in advance of the committee meeting when they are scheduled to be confirmed by the committee.

(7) The most current version of Forms MO 580-2351, MO 580-2352, and MO 580-1871 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

*AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the **Code of State Regulations**. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.*

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.410 Letter of Intent Package. This rule provided the information requirements and the details of how to complete the Letter of Intent package to begin the Certificate of Need (CON) review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and

rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.410 Letter of Intent Package

PURPOSE: This rule provides the information requirements and the details of how to complete the Letter of Intent package to begin the Certificate of Need (CON) review process.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) The Letter of Intent (LOI) (Form MO 580-1860) shall be completed as follows:

(A) Project Information: sufficient information to identify the intended service, such as construction, renovation, new or replacement equipment, and address or plat map identifying a specific site rather than a general area (county designation alone is not sufficient);

(B) Applicant Identification: the full legal name of all owner(s) and operator(s) which compose the applicant(s) who, singly or jointly, propose to develop, offer, lease or operate a new institutional health service within Missouri; provide the corporate entity,

not individual names, of the corporate board of directors or the facility administrator;

(C) Type of Review: the applicant shall indicate if the review is for a full review, expedited review or a non-applicability review;

(D) Project Description: information which provides details of the number of beds to be added, deleted, or replaced, square footage of new construction and/or renovation, services affected and equipment to be acquired. If a replacement project, information which provides details of the facilities or equipment to be replaced, including name, location, distance from the current site, and its final disposition;

(E) Estimated Project Cost: total proposed expenditures necessary to achieve application's objectives—not required for long-term care (LTC) bed expansions pursuant to section 197.318.8(1), RSMo;

(F) Authorized Contact Person Identification: the full name, title, address (including association), telephone number, e-mail, and fax number; and

(G) Applicability: Page 2 of the LOI must be filled out by applicants requesting a non-applicability review to provide the reason and rationale for the exemption or exception being sought.

(2) If a non-applicability review is sought, applicants shall submit the following additional information:

(A) Proposed Expenditures (Form MO 580-2375) including information which details all methods and assumptions used to estimate project costs;

(B) Schematic drawings; and

(C) In addition to the above information, for exceptions or exemptions, documentation of other provisions in compliance with the Certificate of Need (CON) statute, as described in sections (3) through (6) below of this rule.

(3) If an exemption is sought for a residential care facility (RCF) I or II of one hundred (100) beds or less operated by a religious organization pursuant to section 197.305(7), RSMo, applicants shall submit the following additional information:

(A) A letter from the Internal Revenue Service documenting the religious organization's 501(c)(3) tax-exempt status;

(B) Copies of the religious organization's by-laws and articles of incorporation stating the organization's religious mission;

(C) A letter from the religious organization stipulating that it will be the licensed operator and public funds would not be used for the purchase or operation of the proposed facility; and

(D) Any other documents necessary to establish compliance with section 197.305(7), RSMo.

(4) If an exemption is sought for an RCF I or II pursuant to Section 197.312, RSMo, applicants shall submit documentation that this facility had previously been owned or operated for or on behalf of St. Louis City.

(5) If an exemption is sought pursuant to section 197.314(1), RSMo, for a sixty-(60) bed stand-alone facility designed and operated exclusively for the care of residents with Alzheimer's disease or dementia and located in a tax increment financing district established prior to 1990 within any county of the first classification with a charter form of government containing a city with a population of over three hundred fifty thousand (350,000) and which district also has within its boundaries a skilled nursing facility (SNF), applicants shall submit documentation that the health care facility would meet all of these provisions.

(6) If an exemption is sought pursuant to section 197.314(2), RSMo, for either of two (2) SNFs of up to twenty (20) beds each, by a Chapter 198 facility that is owned or operated by a not-for-profit corporation which was created by a special act of the Missouri general assembly, is exempt from federal income tax as

an organization described in Section 501(c)(3) of the *Internal Revenue Code* of 1986, is owned by a religious organization and is to be operated as part of a continuing care retirement community offering independent living, residential care and skilled care which had no skilled nursing beds as of January 1, 1999, documentation that the health care facility would meet all of these provisions.

(7) The LOI must have an original signature for the contact person until the Certificate of Need Program (CONP), when technically ready, shall allow for submission of electronic signatures.

(8) The most current version of Forms 580-1860 and MO 580-2375 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the *Missouri Register*.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.420 Application Process. This rule delineated the process for submitting a Certificate of Need (CON) application for a CON review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to

find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of this *Missouri Register*.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RULE

19 CSR 60-50.420 Review Process

PURPOSE: This rule delineates the process for submitting a Certificate of Need (CON) application for a CON review.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The committee finds that an emergency rule is necessary to preserve health care

access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) The Certificate of Need (CON) filing deadlines are as follows:

(A) For full applications, at least seventy-one (71) days prior to each Missouri Health Facilities Review Committee (committee) meeting:

(B) For expedited equipment replacement applications, expedited long-term care (LTC) facility renovation or modernization applications, and expedited LTC bed expansions and replacements pursuant to section 197.318.8 through 197.318.10, RSMo, the tenth day of each month, or the next business day thereafter if that day is a holiday or weekend;

(C) For non-applicability reviews, the Letter of Intent (LOI) filing may occur at any time.

(2) A CON application filing that does not substantially conform with the LOI, including any change in owner(s), operator(s), scope of services, or location, shall not be considered a CON application and shall be subject to the following provisions:

(A) The Certificate of Need Program (CONP) staff shall return any nonconforming submission; or

(B) The committee may issue an automatic denial unless the applicant withdraws the attempted application.

(3) All filings must occur at the principal office of the committee during regular business hours. The CONP staff, as an agent of the committee, shall provide notification of applications received through publication of the Application Review Schedule (schedule), as follows:

(A) For full applications the schedule shall include the filing date of the application, a brief description of the proposed service, the time and place for filing comments and requests for a public hearing, and the tentative date of the meeting at which the application is scheduled for review. Publication of the schedule shall occur on the next business day after the filing deadline. The publication of the schedule is conducted through the following actions:

1. The schedule shall be submitted to the Secretary of State's Office for publication in the next regularly scheduled *Missouri Register*;

2. A press release about the CON application schedule shall be sent to all newspapers of general circulation in Missouri as supplied by the Department of Health and Senior Services (DHSS), Office of Public Information;

3. The schedule shall be posted on the CON web site; and

4. The schedule shall be mailed to all affected persons who have registered with the CONP staff as having an interest in such CON applications.

(B) For expedited applications the schedule shall include the filing date of the application, a brief description of the proposed service, the time and place for filing comments and requests for a public hearing, and the tentative decision date for the application. Publication of the schedule shall occur on the next business day after the filing deadline. The publication of the schedule is conducted through the following actions:

1. The schedule shall be submitted to the Secretary of State's Office for publication in the next regularly scheduled *Missouri Register*; and

2. The schedule shall be posted on the CON web site.

(C) For non-applicability reviews, the listing of non-applicability letters to be confirmed shall be posted on the CON web site at least twenty (20) days prior to each scheduled meeting of the committee where confirmation is to take place.

(4) When an application for a full review is filed pursuant to section 197.318.1, RSMo, the CONP staff shall immediately request certification of licensed and available bed occupancy and deficiencies for each of the most recent four (4) consecutive calendar quarters in the county and fifteen (15)-mile radius by the DHSS.

(5) The CONP staff shall review CON applications relative to the Criteria and Standards in the order filed.

(6) The CONP staff shall notify the applicant in writing regarding the completeness of a full CON application within fifteen (15) calendar days of filing or within five (5) working days for an expedited application.

(7) Verbal information or testimony shall not be considered part of the application.

(8) Subject to statutory time constraints, the CONP staff shall send its written analysis to the committee as follows:

(A) For full CON applications, the CONP staff shall send the analysis twenty (20) days in advance of the first committee meeting following the seventieth day after the CON application is filed. The written analysis of the CONP staff shall be sent to the applicant no less than fifteen (15) days before the meeting.

(B) For expedited applications which meet all statutory and rules requirements and which have no opposition, the CONP staff shall send its written analysis to the committee and the applicant within two (2) working days following the expiration of the thirty (30)-day public notice waiting period or the date upon which any required additional information is received, whichever is later.

(C) For expedited applications which do not meet all statutory and rules requirements or those which have opposition, they will be considered at the earliest scheduled committee meeting where the written analysis by the CONP staff can be sent to the committee and the applicant at least seven (7) days in advance.

(9) See rule 19 CSR 60-50.600 for a description of the CON decision process.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.430 Application Package. This rule provided the information requirements and the application format of how to complete a Certificate of Need (CON) application for a CON review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need

(CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.430 Application Package

PURPOSE: This rule provides the information requirements and the application format of how to complete a Certificate of Need (CON) application for a CON review.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) A Certificate of Need (CON) application package shall be accompanied by an application fee which shall be a nonrefundable minimum amount of one thousand dollars (\$1000) or one-tenth of one percent (0.1%), which may be rounded up to the nearest dollar, of the total project cost, whichever is greater, made payable to the "Missouri Health Facilities Review Committee."

(2) A written application package consisting of an original and eleven (11) bound copies (comb or three-ring binder) shall be prepared and organized as follows:

(A) The CON Applicant's Completeness Checklists and Table of Contents should be used as follows:

1. Include at the front of the application;
2. Check the appropriate "done" boxes to assure completeness of the application;
3. Number all pages of the application sequentially and indicate the page numbers in the appropriate blanks;
4. Check the appropriate "n/a" box if an item in the Review Criteria is "not applicable" to the proposal; and
5. Restate (preferably in bold type) and answer all items in the Review Criteria.

(B) The Application Package should use one of the following CON Applicant's Completeness Checklists and Table of Contents appropriate to the proposed project, as follows:

1. New Hospital Application (Form MO 580-2501);
2. New Long-Term Care (LTC) Beds Application (Form MO 580-2502);
3. New/Additional Equipment Application (Form MO 580-2503);
4. Expedited LTC Bed Replacement/Expansion Application (Form MO 580-2504);
5. Expedited LTC Renovation/Modernization Application (Form MO 580-2505); or
6. Expedited Equipment Replacement Application (Form MO 580-2506).

(C) The application should be formatted into dividers using the following outline:

1. Divider I. Application Summary;

2. Divider II. Proposal Description;
3. Divider III. Service-Specific Criteria and Standards; and
4. Divider IV. Financial Feasibility (only if required for full applications).

(D) Support Information should be included at the end of each divider section to which it pertains, and should be referenced in the divider narrative. For applicants anticipating having multiple applications in a year, master file copies of such things as maps, population data (if applicable), board memberships, IRS Form 990, or audited financial statements may be submitted once, and then referred to in subsequent applications, as long as the information remains current.

(E) The application package should document the need or meet the additional information requirements in 19 CSR 60-50.450(4-6) for the proposal by addressing the applicable Service-Specific Criteria and Standards using the standards in 19 CSR 60-50.440 through 19 CSR 60-50.460 plus providing additional documentation to substantiate why any proposed alternative Criteria and Standards should be used.

(3) An Application Summary shall be composed of the completed forms in the following order:

(A) Applicant Identification and Certification (Form MO 580-1861). Additional specific information about board membership may be requested, if needed;

(B) A completed Representative Registration (Form MO 580-1869) for the contact person and any others as required by Section 197.326(1), RSMo; and

(C) A detailed Proposed Project Budget (Form MO 580-1863), with an attachment which details how each line item was determined including all methods and assumptions used.

(4) The Proposal Description shall include documents which:

(A) Provide a complete detailed description and scope of the project, and identify all the institutional services or programs which will be directly affected by this proposal.

(B) Describe the developmental details including:

1. A legible city or county map showing the exact location of the facility or health service, and a copy of the site plan showing the relation of the project to existing structures and boundaries;

2. Preliminary schematics for the project that specify the functional assignment of all space which will fit on an eight and one-half inch by eleven inch ($8\frac{1}{2}'' \times 11''$) format (not required for replacement equipment projects). The CON Program staff may request submission of an electronic version of the schematics, when appropriate. The function for each space, before and after construction or renovation, shall be clearly identified and all space shall be assigned;

3. Evidence of submission of architectural plans to the Division of Health Standards and Licensure (DHSL) engineer for long term care projects and the DHSL architect for other facilities (not required for replacement equipment projects);

4. For long-term care proposals, existing and proposed gross square footage for the entire facility and for each institutional service or program directly affected by the project. If the project involves relocation, identify what will go into vacated space;

5. Documentation of ownership of the project site, or that the site is available through a signed option to purchase or lease; and

6. Proposals which include major and other medical equipment should include an equipment list with prices and documentation in the form of bid quotes, purchase orders, catalog prices, or other sources to substantiate the proposed equipment costs.

(C) Proposals for new hospitals, new long-term care (LTC) beds, or new major medical equipment must define the community to be served.

1. Describe the service area(s) population using year 2005 populations and projections which are consistent with those provided by the Bureau of Health Data Analysis (or the Office of

Social and Economic Data Analysis (OSEDA) when additional LTC beds are sought) which can be obtained by contacting:

Chief, Bureau of Health Data Analysis
Center for Health Information Management and Evaluation
(CHIME)

Department of Health and Senior Services
P.O. Box 570, Jefferson City, MO 65102
Telephone: (573) 751-6278
or

Director, Office of Social and Economic Data Analysis
625 Clark Hall, University of Missouri
Columbia, MO 65211
Telephone: (573) 882-7396.

There will be a charge for any of the information requested, and seven to fourteen (7-14) days should be allowed for a response from the CHIME or OSEA. Information requests should be made to CHIME or OSEA such that the response is received at least two (2) weeks before it is needed for incorporation into the CON application.

2. Use the maps and population data received from CHIME or OSEA with the CON Applicant's Population Determination Method to determine the estimated population, as follows:

A. Utilize all of the population for zip codes entirely within the fifteen (15)-mile radius for LTC beds or geographic service area for hospitals and major medical equipment;

B. Reference a state highway map (or a map of greater detail) to verify population centers (see Bureau of Health Data Analysis information) within each zip code overlapped by the fifteen (15)-mile radius or geographic service area;

C. Categorize population centers as either "in" or "out" of the fifteen (15)-mile radius or geographic service area and remove the population data from each affected zip code categorized as "out";

D. Estimate, to the nearest ten percent (10%), the portion of the zip code area that is within the fifteen (15)-mile radius or geographic service area by "eyeballing" the portion of the area in the radius (if less than five percent (5%), exclude the entire zip code);

E. Multiply the remaining zip code population (total population less the population centers) by the percentage determined in "D" (due to numerous complexities, population centers will not be utilized to adjust overlapped zip code populations in Jackson, St. Louis, and St. Charles Counties or St. Louis City; instead, the total population within the zip code will be considered uniform and multiplied by the percentage determined in "D");

F. Add back the population center(s) "inside" the radius or region for zip codes overlapped; and

G. The sum of the estimated zip codes, plus those entirely within the radius, will equal the total population within the fifteen (15)-mile radius or geographic service area.

3. Provide other statistics, such as studies, patient origin or discharge data, Hospital Industry Data Institutes (HIDI) information, or consultants' reports, to document the size and validity of any proposed user-defined "geographic service area."

(D) Identify specific community problems or unmet needs which the proposed or expanded service is designed to remedy or meet;

(E) Provide historical utilization for each existing service affected by the proposal for each of the past three (3) years.

(F) Provide utilization projections through at least three (3) years beyond the completion of the project for all proposed and existing services directly affected by the project.

(G) If an alternative methodology is added, specify the method used to make need forecasts and describe in detail whether projected utilizations will vary from past trends.

(H) Provide the current and proposed number of licensed beds by type for projects which would result in a change in the licensed bed complement of the LTC facility.

(4) Document that consumer needs and preferences have been included in planning this project. Describe how consumers have had an opportunity to provide input into this specific project, and include in this section all petitions, letters of acknowledgement, support or opposition received.

(5) The most current version of Forms MO 580-2501, MO 580-2502, MO 580-2503, MO 580-2504, MO 580-2505, MO 580-1861, MO 580-1869 and MO 580-1863 may be obtained by mailing a written request to the Certificate of Need Program (CONP), 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.440 Criteria and Standards for Hospital and Freestanding Services. This rule listed the service-specific criteria and standards used in the Certificate of Need (CON) review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (Committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes.

poses. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1997. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RULE

19 CSR 60-50.440 Criteria and Standards for Equipment and New Hospitals

PURPOSE: This rule lists the service-specific criteria and standards used in the Certificate of Need (CON) review process.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care

access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) For new units or services in the geographic service area, use the following methodologies:

(A) The population-based need formula should be (Unmet Need = $(S \times P) - U$), where:

P = Year 2005 population in the service area(s);

U = Number of service units in the geographic service area(s); and

S = Service-specific need rate of one (1) unit per population listed:

1. Magnetic resonance imaging unit	100,000
2. Positron emission tomography unit	500,000
3. Lithotripsy unit	1,000,000
4. Linear accelerator unit	100,000
5. Adult cardiac catheterization lab	50,000
6. Pediatric cardiac catheterization lab	50,000
7. Adult open heart surgery rooms	100,000
8. Pediatric open heart surgery rooms	100,000
9. All general surgery	10,000
10. Gamma knife	7,500,000
11. Excimer laser	500,000

(B) The minimum annual utilization for all other providers in the geographic service area should achieve at least the following rates:

1. Magnetic resonance imaging procedures	2,000
2. Positron emission tomography procedures	1,000
3. Lithotripsy treatments	1,000
4. Linear accelerator treatments	3,500
5. Adult cardiac catheterization procedures (include coronary angioplasties)	500
6. Pediatric cardiac catheterization procedures	250
7. Adult open heart surgery operations	200
8. Pediatric open heart surgery operations	100
9. All general surgery	750
10. Gamma knife treatments	200
11. Hemodialysis treatments	200
12. Excimer laser procedures	1,800

(C) Long-term care hospitals (such as a hospital-within-a-hospital or long term acute care hospital) should comply with the standards as described in 42 CFR, section 412.23(e), and bed need requirements should meet the applicable population-based bed need and utilization standards in 19 CSR 60-50.450;

(D) Geographic service areas and alternate methodologies may be provided in addition to the fifteen (15)-mile radius calculation and should have substitute values for the population-based need formula.

(2) For additional units or services, the applicant's optimal annual utilization should achieve at least the following rates:

(A) Magnetic resonance imaging procedures	3,000
(B) Positron emission tomography procedures	1,000
(C) Lithotripsy treatments	1,000
(D) Linear accelerator treatments	6,000
(E) Adult cardiac catheterization procedures	750
(F) Pediatric cardiac catheterization procedures	375
(G) Adult open heart surgery operations	300
(H) Pediatric open heart surgery operations	150
(I) All other general surgery	1,125
(J) Gamma knife treatments	200
(K) Hemodialysis treatments	200
(L) Excimer laser procedures	3,600

(3) For replacement equipment, utilization standards are not used, but rather the following questions should be answered:

(A) What is the financial rationale for the replacement?

(B) How has the existing unit exceeded its useful life in accordance with American Hospital Association guidelines?

(C) How does the replacement unit affect quality of care compared to the existing unit?

(D) Is the existing unit in constant need of repair?

(E) Has the current lease on the existing unit expired?

(F) What technological advances will the new unit include?

(G) How will patient satisfaction be improved?

(H) How will the new unit improve outcomes and/or clinical improvements?

(I) What impact will the new unit have on utilization and operational efficiencies?

(J) How will the new unit add additional capabilities?

(K) By what percentage will this replacement increase patient charges?

(4) For the construction of a new hospital, the following questions should be answered:

(A) What methodology was utilized to determine the need for the proposed hospital?

(B) Provide evidence that the current occupancy of other hospitals in the proposed geographic service area exceeds eighty percent (80%).

(C) What impact would the proposed hospital have on utilization of other hospitals in the geographic service area?

(D) What is the unmet need according to the following population-based bed need formula using (Unmet Need = $(S \times P) - U$), where:

P = Year 2005 population in the geographic service area;

U = Number of beds in the geographic service area; and

S = Service-specific need rate of one (1) bed per population as follows:

1. Medical/surgical bed	570
2. Pediatric bed	8,330
3. Psychiatric bed	2,080
4. Substance abuse/chemical dependency bed	20,000
5. Inpatient rehabilitation bed	9,090
6. Obstetric bed	5,880

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.450 Criteria and Standards for Long-Term Care. This rule outlined the criteria and standards against which a project involving a long-term care facility would be evaluated in a Certificate of Need (CON) review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care

cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.450 Criteria and Standards for Long-Term Care

PURPOSE: *This rule outlines the criteria and standards against which a project involving a long-term care facility would be evaluated in a Certificate of Need (CON) review.*

EMERGENCY STATEMENT: *This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.*

unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) All additional long-term care (LTC) beds in nursing homes, hospitals, and residential care facilities (RCF), and beds in long-term acute hospitals are subject to the LTC bed minimum occupancy requirements (MOR) pursuant to sections 197.317 and 197.318(1), RSMo, with certain exemptions and exceptions pursuant to sections 197.305(7) and 197.312, RSMo, and LTC bed expansions and replacements pursuant to sections 197.318.8 through 197.318.10, RSMo.

(2) The MOR for additional LTC beds pursuant to section 197.318.1, RSMo, shall be met if the average occupancy for all licensed and available LTC beds located within the county and within fifteen (15) miles of the proposed site exceeded ninety percent (90%) during at least each of the most recent four (4) consecutive calendar quarters at the time of application filing as reported in the Division of Health Standards and Licensure (DHSL), Department of Health and Senior Services, Quarterly Survey of Hospital and Nursing Home (or Residential Care Facility) Bed Utilization and certified through a written finding by the DHSL, in which case the following population-based bed need methodology shall be used to determine the maximum size of the need:

(A) Approval of additional intermediate care facility/skilled nursing facility (ICF/SNF) beds will be based on a service area need determined to be fifty-three (53) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of ICF/SNF beds shown in the Inventory of Hospital and Nursing Home ICF/SNF Beds as provided by the Certificate of Need Program (CONP) which includes licensed and Certificate of Need (CON)-approved beds; and

(B) Approval of additional RCF beds will be based on a service area need determined to be sixteen (16) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of RCF beds shown in the Inventory of Residential Care Facility Beds as provided by the CONP which includes licensed and CON-approved beds.

(3) Replacement Chapter 198 beds qualify for an exception to the LTC bed MOR plus shortened information requirements and review time frames if an applicant proposes to:

(A) Relocate RCF beds within a six (6)-mile radius pursuant to section 197.318.8(4), RSMo;

(B) Replace one-half (1/2) of its licensed beds within a thirty (30)-mile radius pursuant to section 197.318.9, RSMo; or

(C) Replace a facility in its entirety within a fifteen (15)-mile radius pursuant to section 197.318.10, RSMo, under the following conditions:

1. The existing facility's beds shall be replaced at only one (1) site;

2. The existing facility and the proposed facility shall have the same owner(s), regardless of corporate structure; and

3. The owner(s) shall stipulate in writing that the existing facility's beds to be replaced will not be used later to provide long-term care services; or if the facility is operated under a lease, both the lessee and the owner of the existing facility shall stipulate the same in writing.

(4) LTC bed expansions involving a Chapter 198 facility qualify for an exception to the LTC bed MOR. In addition to the shortened information requirements and review time frames, applicants shall also submit the following information:

(A) If an effort to purchase has been successful pursuant to section 197.318.8(1), RSMo, a Purchase Agreement (Form MO 580-2352) between the selling and purchasing facilities, and a copy of the selling facility's reissued license verifying the surrender of the beds sold; or

(B) If an effort to purchase has been unsuccessful pursuant to section 197.318.8(1), RSMo, a Purchase Agreement (Form MO 580-2352) between the selling and purchasing facilities which documents the "effort(s) to purchase" LTC beds.

(5) An exception to the LTC bed MOR and CON application filing fee will be recognized for any proposed facility which is designed and operated exclusively for persons with acquired human immunodeficiency syndrome (AIDS).

(6) An exception to the LTC bed MOR will be recognized for a proposed LTC facility where at least ninety-five percent (95%) of the patients require kosher diets pursuant to section 197.318.5, RSMo.

(7) Any newly-licensed Chapter 198 facility established as a result of the Alzheimer's and dementia demonstration projects pursuant to Chapter 198, RSMo, or aging-in-place pilot projects pursuant to Chapter 198, RSMo, as implemented by the DHSL, may be licensed by the DHSL until the completion of each project. If a demonstration or pilot project receives a successful evaluation from the DHSL and a qualified Missouri school or university, and meets the DHSL standards for licensure, this will ensure continued licensure without a new CON.

(8) For LTC renovation or modernization projects which do not include increasing the number of beds, the applicant should document the following, if applicable:

(A) The proposed project is needed to comply with current facility code requirements of local, state or federal governments;

(B) The proposed project is needed to meet requirements for licensure, certification or accreditation, which if not undertaken, could result in a loss of accreditation or certification;

(C) Operational efficiencies will be attained through reconfiguration of space and functions;

(D) The methodologies used for determining need; and

(E) The rationale for the reallocation of space and functions.

(9) The most current version of Form MO 580-2352 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the form from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.460 Criteria and Standards for Other Health Services and Emerging Technology. This rule outlined the criteria and standards against which a project involving a modernization or renovation of a health care facility or a project involving new and emerging technology would be evaluated in a Certificate of Need (CON) review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and

prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1997. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.460 Criteria and Standards for Evolving Technology

PURPOSE: This rule outlines the criteria and standards against which a project involving new technology would be evaluated in a Certificate of Need (CON) review.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) For evolving technology not currently available in the state or not in general usage in the state, the following shall be documented:

(A) The medical effects shall be described and documented in published scientific literature;

(B) The degree to which the objectives of the technology have been met in practice;

(C) Any side effects, contraindications or environmental exposures;

(D) The relationships, if any, to existing preventive, diagnostic, therapeutic or management technologies and the effects on the existing technologies;

(E) Food and Drug Administration approval;

(F) The need methodology used by this proposal in order to assess efficacy and cost impact of the proposal; and

(G) Explain the degree of partnership, if any, with other institutions for the joint use of and financing of the evolving technology.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RESCISSON

19 CSR 60-50.470 Criteria and Standards for Financial Feasibility. This rule outlined the criteria and standards against which a project involving a health care facility would be evaluated relative to the financial feasibility of the project in a Certificate of Need (CON) review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law,

which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1999. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective April 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.470 Criteria and Standards for Financial Feasibility

PURPOSE: This rule outlines the criteria and standards against which a project involving a health care facility would be evaluated relative to the financial feasibility of the project in a Certificate of Need (CON) review.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provi-

sions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) Proposals for any new hospital, nursing home, or residential care facility construction must include documentation that the proposed costs per square foot are reasonable when compared to the latest "RS Means Construction Cost Data" available from Certificate of Need Program (CONP). Any proposal with costs in excess of the three-fourths (3/4) percentile must include justification for the higher costs.

(2) Document that sufficient financing will be available to assure completion of the project by providing a letter from a financial institution saying it is willing to finance the project, or an auditor's statement that unrestricted funds are available for the project.

(3) Document financial feasibility by including:

(A) The Service-Specific Revenues and Expenses (Form MO 580-1865) for each revenue generating service affected by the project for the past three (3) years projected through three (3) years beyond project completion;

(B) The Detailed Institutional Cash Flows (Form MO 580-1866) for the past three (3) years projected through three (3) years beyond project completion; and

(C) For existing services, a copy of the latest available audited financial statements or the most recent Internal Revenue Service (IRS) 990 Form or similar IRS filing for facilities not having individual audited financial statements.

(4) Show how the proposed service will be affordable to the population in the proposed service area:

(A) Document how the proposal would impact current patient charges, and disclose the method for deriving charges for this service, including both direct and indirect components of the charge; and

(B) Demonstrate that the proposed service will be responsive to the needs of the medically indigent through such mechanisms as fee waivers, reduced charges, sliding fee scales or structured payments.

(5) The most current version of Forms MO 580-1865 and MO 580-1866 may be obtained by mailing a written request to the Certificate of Need Program (CONP), 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective April 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH

Division 60—Missouri Health Facilities Review

Committee

Chapter 50—Certificate of Need Program

EMERGENCY RESCISSION

19 CSR 60-50.480 Criteria and Standards for Alternatives. This rule outlined the criteria and standards for alternatives considered to a project involving a health care facility in order to

determine cost effectiveness in a Certificate of Need (CON) review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1997. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSION

19 CSR 60-50.500 Additional Information. This rule described the process for submitting additional information and for requesting a public hearing on Certificate of Need (CON) applications in the CON review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR
SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program

EMERGENCY RULE**

19 CSR 60-50.500 Additional Information

PURPOSE: This rule describes the process for submitting additional information and for requesting a public hearing on Certificate of Need (CON) applications in the CON review process.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules

in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) Additional information requested by the Missouri Health Facilities Review Committee (committee) shall be submitted within the time frame specified by the committee.

(2) If an application is determined to be incomplete, the applicant shall be notified within fifteen (15) calendar days after filing (five (5) working days in the case of an expedited application). The applicant's written response shall be received within fifteen (15) calendar days after receipt of notification.

(3) Information submitted by interested parties should be received at the committee's principal office at least thirty (30) calendar days before the scheduled meeting of the committee.

(4) Copies of any additional information sent directly to the committee by applicants or interested parties should also be sent to the Certificate of Need Program (CONP) for file copies.

(5) When a request in writing is filed by any affected person within thirty (30) calendar days from the date of publication of the Application Review Schedule, the committee or CONP staff shall hold a public hearing on any application under the following conditions:

(A) The hearing may be conducted in the city of the proposed project if monetarily feasible;

(B) The CONP staff will present the introductions and orientation for the public hearing;

(C) The applicant may have up to fifteen (15) minutes for an applicant presentation at the public hearing;

(D) Any person may present written testimony and up to five (5) minutes of verbal testimony at the public hearing; and

(E) The testimony shall become a part of the record of the review.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSION

19 CSR 60-50.600 Certificate of Need Decisions. This rule describes the process for making decisions on Certificate of Need (CON) applications in the CON review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 97.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec.

14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.600 Certificate of Need Decisions

PURPOSE: This rule describes the process for making decisions on Certificate of Need (CON) applications in the CON review process.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) Decisions on full Certificate of Need (CON) applications and contested expedited applications shall be subject to the following:

(A) Parliamentary procedures for all meetings shall follow *Robert's Rules of Order*, newly revised 1990 edition, 9th edition.

(B) The Certificate of Need Program's analysis becomes the findings of fact for the Missouri Health Facilities Review Committee (committee) decision except to the extent that it is expressly rejected, amended or replaced by the committee in which case the minutes of the committee will contain the changes and become the amended findings of fact of the committee. The committee's final vote becomes conclusion of law.

(C) A final decision is rendered on any application after each committee member present is given the opportunity to vote and the chair announces the passage or defeat of the motion on the floor. The chair or acting chair shall vote only in case of a tie.

(2) Decisions on expedited CON applications shall be subject to the following:

(A) In the case of qualifying expedited review applications, committee members will receive a ballot in addition to the written analysis. Members may vote either to approve the application or to have it placed on the next formal meeting agenda for consideration.

(B) Ballots may be returned to the CON office by either mail, e-mail, or fax, but must be received within ten (10) days from the date they were mailed to committee members.

(C) A final decision to approve the application will be rendered if all ballots received by the cut-off date (a majority is required) signifying a vote to approve the project. If the vote is not unanimous, the application will be subject to the provisions of (1) of this section.

(3) The committee shall make a decision on an application within one hundred-thirty (130) calendar days after the date the application is filed, and subsequently notify the applicant by providing either a legal certificate or denial letter.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the *Missouri Register*.

Title 19—DEPARTMENT OF HEALTH

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RESCISSION

19 CSR 60-50.700 Post-Decision Activity. This rule described the procedure for filing Periodic Progress Reports after approval of Certificate of Need (CON) applications, CONs subject to forfeiture, and the procedure for requesting a cost overrun.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

EMERGENCY STATEMENT: This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for

CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1999. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective April 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.700 Post-Decision Activity

PURPOSE: This rule describes the procedure for filing Periodic Progress Reports after approval of Certificate of Need (CON) applications, CONs subject to forfeiture, and the procedure for requesting a cost overrun.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians,

investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) Applicants who have been granted a Certificate of Need (CON) shall file reports with the Missouri Health Facilities Review Committee (committee), using Periodic Progress Report (Form MO 580-1871). The reports shall be filed by the end of each six (6)-month period from CON approval until project construction and/or expenditures are complete. All Periodic Progress Reports must contain a complete and accurate accounting of all expenditures for the report period.

(2) Applicants who fail to incur a capital expenditure within six (6) months may request an extension of six (6) months by submitting a letter to the committee outlining the reasons for the failure, with a listing of the actions to be taken within the requested extension period to insure compliance; the Certificate of Need Program (CONP) staff on behalf of the committee will analyze the request and grant an extension, if appropriate. Applicants who request additional extensions must provide additional financial information or other information, if requested by the CONP staff.

(3) A CON shall be subject to forfeiture for failure to:

(A) Incur a project-specific capital expenditure within twelve (12) months after the date the CON was issued through initiation of project aboveground construction or lease/purchase of the proposed equipment since a capital expenditure, according to generally accepted accounting principles, must be applied to a capital asset; or

(B) File the required Periodic Progress Report.

(4) If the CONP finds that a CON may be subject to forfeiture:

(A) Not less than thirty (30) calendar days prior to a committee meeting, the CONP shall notify the applicant in writing of the possible forfeiture, the reasons for it, and its placement on the committee agenda for action; and

(B) After receipt of the notice of possible forfeiture, the applicant may submit information to the committee within ten (10) calendar days to show compliance with this rule or other good cause as to why the CON shall not be forfeited.

(5) If the committee forfeits a CON, CONP staff shall notify all affected state agencies of this action.

(6) Cost overrun review procedures implement the CON statute section 197.315.7, RSMo. Immediately upon discovery that a project's actual costs would exceed approved project costs by more than ten percent (10%), an applicant shall apply for approval of the cost variance. A nonrefundable fee in the amount of one-tenth of one percent (0.1%) of the additional project cost above the approved amount made payable to "Missouri Health Facilities Review Committee" shall be required. The original and eleven (11) copies of the information requirements for a cost overrun review are required as follows:

(A) Amount and justification for cost overrun shall document:

1. Why and how the approved project costs would be exceeded, including a detailed listing of the areas involved;
2. Any changes that have occurred in the scope of the project as originally approved; and
3. The alternatives to incurring this overrun that were considered and why this particular approach was selected.

(B) Provide a Proposed Project Budget (Form MO 580-1863).

(7) At any time during the process from Letter of Intent to project completion, the applicant is responsible for notifying the committee of any change in the designated contact person. If a change is necessary, the applicant must file a Contact Person Correction (Form MO 580-1870).

(8) The most current version of Forms MO 580-1871, MO 580-1863, and MO 580-1870 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective April 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.800 Meeting Procedures. This rule described the meeting format and protocol in a Certificate of Need (CON) review meeting.

PURPOSE: *This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.*

EMERGENCY STATEMENT: *This emergency rescission is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.*

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rescission because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rescission to be fair to all interested parties under these circumstances so that the committee

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.800 Meeting Procedures

PURPOSE: *This rule describes the meeting format and protocol in a Certificate of Need (CON) review meeting.*

EMERGENCY STATEMENT: *This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.*

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) The regular meetings of the Missouri Health Facilities Review Committee (committee) to consider Certificate of Need (CON) applications shall be held approximately every eight (8) weeks according to a schedule adopted by the committee before the beginning of each calendar year and modified periodically to reflect changes. A copy of this calendar may be obtained from the CON Program (CONP) staff.

(2) The original and eleven (11) copies of all new information not previously in the application or requests for the addition of agenda items shall be received by the CONP staff at least thirty (30) calendar days before the scheduled meeting with one (1) exception. An applicant shall have no less than fifteen (15) days to respond to the findings of the staff and adverse information received from other parties. An applicant should respond in writing to an inquiry from a committee member at any time, and the response shall be provided to the committee for consideration.

(3) Any committee member may request that an item be added to the agenda up to forty-eight (48) hours before the scheduled meeting, exclusive of weekends and holidays when the principal office is closed.

(4) The tentative agenda for each committee meeting shall be released at least twenty (20) calendar days before each meeting.

(5) The committee may give the applicant and interested parties an opportunity to make brief presentations at the meeting according to the Missouri Health Facilities Review Committee Meeting Format and Missouri Health Facilities Review Committee Meeting Protocol. The applicant and interested parties shall conform to the following procedures:

(A) The applicant's presentation shall be a key points summary based on the written application and shall not exceed ten (10) minutes inclusive of all presenters with five (5) minutes additional time for summation;

(B) Others in support or opposition to the applicant's project (such as political representatives, citizens of the community and other providers) shall be categorized as unrelated parties and shall appear after the applicant's presentation;

(C) Regardless of the number of presenters involved in the presentation, individual presentations by unrelated parties in support of, neutral, or in opposition to the applicant's project shall not exceed three (3) minutes each;

(D) No new material shall be introduced with the exception of materials or information provided in response to the CONP staff or at the request of a committee member;

(E) Rebuttals by applicants of presentations by interested parties are generally allowed;

(F) All presenters shall complete and sign a Representative Registration (Form MO 580-1869) and give it to the sign-in coordinator prior to speaking;

(G) The reserved area in the hearing room may be used by an applicant only during the applicant's presentation and then vacated for the next group (individuals waiting to present shall remain clear of the podium and staff area until specifically called by the chairman); and

(H) Prescribed time limits shall be monitored by the timekeeper, and presenters shall observe the timekeeper's indications of lapsed time to ensure that each presenter has an opportunity to present within the allotted time.

(6) Additional meetings of the committee may be held periodical- ly. These meetings may include educational workshops for mem- bers to gain knowledge, meetings with organizations for coopera- tive purposes, discussion of rules, seeking legal advice from coun- sel, and other issues.

(7) The most current version of Form MO 580-1869 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP office, or, if technically feasible, by downloading a copy of the form from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

EMERGENCY RESCISSON

19 CSR 60-50.900 Administration. This rule described the duties and responsibilities of the Certificate of Need (CON) Program staff.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

*EMERGENCY STATEMENT: This emergency rescission is nec- es-
sary to preserve a compelling government interest in health care
cost containment. It requires rewriting the Certificate of Need
(CON) rules in order to implement the December 31, 2001, effec-
tive date of the acute care sunset provision in section 197.366 of
the CON statutes. The CON statutes, sections 197.300 to 197.366,
were enacted to ensure the preservation of health care access, the
prevention of unnecessary duplication, the containment of health
care costs, and the reasonable distribution of health services in
Missouri.*

*Therefore, the Missouri Health Facilities Review Committee
(committee) files this emergency rescission because it is necessary
for the immediate preservation of the public health, safety, and
welfare and to ensure health care access at a reasonable cost. The
sunset provision of section 197.366 changes the scope of work and
the manner in which the committee conducts the review process for
CON applications by eliminating the review of certain acute care
facilities.*

*The committee believes this emergency rescission to be fair to all
interested parties under these circumstances so that the committee
may give clear guidance to health care facilities, physicians,
investors, and other prospective applicants for their planning pur-
poses. The committee also wishes to reduce applicant risks of
incurring substantial capital expenditures without a CON, only to
find later that their projects may have been contrary to state law,*

which would result in the loss of their capital investments with no redress possible.

This emergency rescission limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rescission is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rescission was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

EMERGENCY RULE

19 CSR 60-50.900 Administration

PURPOSE: This rule describes the duties and responsibilities of the Certificate of Need (CON) Program staff.

EMERGENCY STATEMENT: This emergency rule is necessary to preserve a compelling government interest in health care cost containment. It requires rewriting the Certificate of Need (CON) rules in order to implement the December 31, 2001, effective date of the acute care sunset provision in section 197.366 of the CON statutes. The CON statutes, sections 197.300 to 197.366, were enacted to ensure the preservation of health care access, the prevention of unnecessary duplication, the containment of health care costs, and the reasonable distribution of health services in Missouri.

Therefore, the Missouri Health Facilities Review Committee (committee) files this emergency rule because it is necessary for the immediate preservation of the public health, safety, and welfare and to ensure health care access at a reasonable cost. The sunset provision of section 197.366 changes the scope of work and the manner in which the committee conducts the review process for CON applications by eliminating the review of certain acute care facilities.

The committee believes this emergency rule to be fair to all interested parties under these circumstances so that the committee may give clear guidance to health care facilities, physicians, investors, and other prospective applicants for their planning purposes. The committee also wishes to reduce applicant risks of incurring substantial capital expenditures without a CON, only to find later that their projects may have been contrary to state law, which would result in the loss of their capital investments with no redress possible.

This emergency rule limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The committee finds that an emergency rule is necessary to preserve health care access, allow health care providers to implement the sunset provisions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

sions of section 197.366, process applications, and prevent the immediate danger to the public health, safety, and welfare of the citizens of Missouri. This emergency rule was filed on December 14, 2001, to become effective on January 1, 2002, and will expire on June 29, 2002.

(1) The role of the Missouri Health Facilities Review Committee (committee) includes the following:

(A) Make specific decisions about applications, applicability and administrative matters;

(B) Make policy decisions to include the development of rules; and

(C) Oversee operations of the Certificate of Need Program (CONP) staff.

(2) The role of the CONP staff includes the following:

(A) Act as an agent of the committee; and

(B) Perform administrative tasks.

(3) The CONP staff shall be staffed as follows:

(A) The committee shall employ a CONP director and additional staff to perform the duties assigned to it by law;

(B) The committee shall designate the CONP director, or his/her designee, to perform any administrative functions that may be required of the committee by law; and

(C) The CONP staff shall be housed at the principal office of the committee.

(4) The committee shall maintain its principal office in Jefferson City where the CONP staff will;

(A) Accept letters of intent, applications and any other written communication related to the conduct of the CONP;

(B) Accept service of legal process;

(C) Maintain its records; and

(D) Post all notices required by law.

(5) The CONP staff shall provide technical assistance to potential applicants.

(6) The committee and CONP staff shall publish quarterly reports containing the status of reviews being conducted, the reviews completed since the last report, and the decisions made, plus an annual summary of activities for the past calendar year.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN

Division 10—Health Care Plan
Chapter 2—Plan Options

EMERGENCY AMENDMENT

22 CSR 10-2.010 Definitions. The board is amending subsection (1)(O).

PURPOSE: The amendment includes changes in the definitions made by the board of trustees regarding the key terms within the Missouri Consolidated Health Care Plan.

EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2002, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2002, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 17, 2001, becomes effective January 1, 2002, and expires on June 29, 2002.

(1) When used in this plan document, these words and phrases have the meaning—

(O) Eligibility date—Refer to 22 CSR 10-2.020 for effective date provisions.

1. Newly-hired employees and their eligible dependents, or employees rehired after their participation terminates and their eligible dependents, are eligible to participate in the plan on the first day of the month following the employee's date of employment or reemployment.

2. Employees transferred from a department or other public entity with coverage under another medical care plan into a department or other public entity covered by this plan and their eligible dependents who were covered by the other medical care plan will be eligible for participation [*immediately*] subject to the provisions of 22 CSR 10-2.060(1)(Q)1.

3. Employees who terminate all employment with the state (not simply move from one agency to another) and are rehired as a new state employee before termination of participation, and their eligible dependents who were covered by the PPO plan, will be eligible for participation immediately.

4. Employees who terminate all employment with the state (not simply move from one agency to another) and are rehired as a new state employee in the subsequent month, and their eligible dependents who were covered by the PPO plan, will be eligible for participation retroactive to the date following termination of participation;

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—Plan Options

EMERGENCY AMENDMENT

22 CSR 10-2.040 PPO Plan Summary of Medical Benefits. The board is amending section (9).

PURPOSE: The amendment includes changes made by the board of trustees regarding medical benefits for participants in the Missouri Consolidated Health Care Plan PPO Plan.

EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2002, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2002, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 17, 2001, becomes effective January 1, 2002, and expires on June 29, 2002.

(9) Prescription Drug Program—The PPO plan provides coverage for [*maintenance and non-maintenance medications*,] **prescription drugs** as described in the following:

(A) Medications.

1. In-Network.

A. [*Five dollar (\$5)*] **Ten dollar (\$10)** co-pay for thirty (30)-day supply for generic drug on the formulary.

B. [*Fifteen dollar (\$15)*] **Twenty dollar (\$20)** co-pay for thirty (30)-day supply for brand drug on the formulary.

C. [*Twenty-five dollar (\$25)*] **Thirty-five dollar (\$35)** co-pay for thirty (30)-day supply for non-formulary drug.

2. [*Non-Network*]—The deductible will apply. After satisfaction of the deductible, claims will be paid at fifty percent (50%) coinsurance. Charges will not be applied to the out-of-pocket maximum.] Prescriptions filled with a brand drug when a generic is available will be subject to the generic co-payment amount and the member must also pay the difference in the cost between the generic and brand drugs.

3. Mail Order Program—Prescriptions may be filled through a mail order program for up to a ninety (90)-day supply for twice the regular co-payment [*for a drug on the maintenance list*].

(B) Non-Network Pharmacies—if a member chooses to use a non-network pharmacy, s/he will be required to pay the full cost of the prescription, then file a claim with the prescription drug administrator. S/he will be reimbursed the amount that would have

been allowed at an in-network pharmacy, less any applicable *[deductibles or coinsurance] co-payment*. Any difference between the amount paid by the member at a non-network pharmacy and the amount that would have been allowed at an in-network pharmacy will not be applied to the out-of-pocket maximum.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed amendment covering this same material is published in this issue of the *Missouri Register*.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN

Division 10—Health Care Plan **Chapter 2—Plan Options**

EMERGENCY AMENDMENT

22 CSR 10-2.045 Co-Pay Plan Summary of Medical Benefits. The board is amending section (9).

PURPOSE: The amendment includes changes made by the board of trustees regarding medical benefits in the Missouri Consolidated Health Care Plan Co-Pay Plan.

EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2002, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2002, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 17, 2001, becomes effective January 1, 2002, and expires on June 29, 2002.

(9) Prescription Drug Program—The co-pay plan provides coverage for *[maintenance and non-maintenance medications,]* prescription drugs as described in the following:

(A) Medications.

1. In-Network.

A. Ten dollar (\$10) co-pay for thirty (30)-day supply for generic drug on the formulary.

B. *[Fifteen dollar (\$15)] Twenty dollar (\$20)* co-pay for thirty (30)-day supply for brand drug on the formulary.

C. *[Twenty-five dollar (\$25)] Thirty-five dollar (\$35)* co-pay for thirty (30)-day supply for non-formulary drug.

2. *[Non-Network—The deductible will apply. After satisfaction of the deductible, claims will be paid at fifty percent (50%) coinsurance. Charges will not be applied to the out-of-pocket maximum.] Prescriptions filled with a brand drug when a generic is available will be subject to the generic co-payment amount and the member must also pay the difference in the cost between the generic and brand drugs.*

3. Mail Order Program—Prescriptions may be filled through a mail order program for up to a ninety (90)-day supply for twice the regular co-payment *[for a drug on the maintenance list].*

(B) Non-Network Pharmacies—if a member chooses to use a non-network pharmacy, s/he will be required to pay the full cost of the prescription, then file a claim with the prescription drug administrator. S/he will be reimbursed the amount that would have been allowed at an in-network pharmacy, less any applicable *[deductibles or coinsurance] co-payment*. Any difference between the amount paid by the member at a non-network pharmacy and the amount that would have been allowed at an in-network pharmacy will not be applied to the out-of-pocket maximum.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 12, 2000, effective Jan. 1, 2001, expires June 29, 2001. Original rule filed Dec. 12, 2000, effective June 30, 2001. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed amendment covering this same material is published in this issue of the *Missouri Register*.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN

Division 10—Health Care Plan **Chapter 2—Plan Options**

EMERGENCY AMENDMENT

22 CSR 10-2.055 Co-Pay Plan Benefit Provisions and Covered Charges. The board is amending subsection (1)(BB).

PURPOSE: The amendment includes changes made by the board of trustees regarding benefit provisions and covered charges in the Missouri Consolidated Health Care Plan Co-Pay Plan.

EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2002, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2002, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by

the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 17, 2001, becomes effective January 1, 2002, and expires on June 29, 2002.

(1) **Covered Charges.**

(BB) Prescription Drugs—Insulin, syringes, test strips and glucometers are included in this coverage. There is no out-of-pocket maximum. Member is responsible only for the lesser of the applicable co-payment or the cost of the drug.

1. Ten dollar (\$10) co-pay for thirty (30)-day supply for generic drug on the formulary.
2. */Fifteen dollar (\$15)/ Twenty dollar (\$20)* co-pay for thirty (30)-day supply for brand drug on the formulary.
3. */Twenty-five dollar (\$25)/ Thirty-five dollar (\$35)* co-pay for thirty (30)-day supply for non-formulary drug.
4. Ninety (90)-day supply of */maintenance* medication for two (2) co-payments (mail order only).

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 12, 2000, effective Jan. 1, 2001, expired June 29, 2001. Original rule filed Dec. 12, 2000, effective June 30, 2001. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN

**Division 10—Health Care Plan
Chapter 2—Plan Options**

EMERGENCY AMENDMENT

22 CSR 10-2.063 HMO/POS Premium Option Summary of Medical Benefits. The board is amending subsections (1)(X) and (1)(AA).

PURPOSE: The amendment includes changes made by the board of trustees regarding the medical benefits of the HMO/POS Premium Option in the Missouri Consolidated Health Care Plan.

EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2002, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2002, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency

amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 17, 2001, becomes effective January 1, 2002, and expires on June 29, 2002.

(1) **Covered Charges.**

(X) Physical Therapy and Rehabilitation Services—Five dollar (\$5) co-payment per visit for outpatient therapy. Limited to sixty (60) visits per incident. Additional visits */subject to medical review/ may be allowed if showing significant improvement and recommended by case management.*

(AA) Prescription Drugs—Insulin, syringes, test strips and glucometers are included in this coverage. There is no out-of-pocket maximum. Member is responsible only for the lesser of the applicable co-payment or the cost of the drug.

1. */Five dollar (\$5)/ ten dollar (\$10)* co-pay for thirty (30)-day supply for generic drug on the formulary.

2. */Fifteen dollar (\$15)/ Twenty dollar (\$20)* co-pay for thirty (30)-day supply for brand drug on the formulary.

3. */Twenty-five dollar (\$25)/ Thirty-five dollar (\$35)* co-pay for thirty (30)-day supply for non-formulary drug.

4. Ninety (90)-day supply of */maintenance* medication for two (2) co-payments through mail order.

5. Prescriptions filled with a brand drug when a generic is available will be subject to the generic co-payment amount and the member must also pay the difference in cost between the generic and brand drugs.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 12, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 12, 1994, effective June 30, 1995. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN

**Division 10—Health Care Plan
Chapter 2—Plan Options**

EMERGENCY AMENDMENT

22 CSR 10-2.064 HMO/POS Standard Option Summary of Medical Benefits. The board is amending subsections (1)(X) and (1)(AA).

PURPOSE: The amendment includes changes made by the board of trustees regarding the medical benefits of the HMO/POS Standard Option in the Missouri Consolidated Health Care Plan.

EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2002, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2002, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency

subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2002, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 17, 2001, becomes effective January 1, 2002, and expires on June 29, 2002.

(1) **Covered Charges.**

(X) Physical Therapy and Rehabilitation Services—Ten dollar (\$10) co-payment per visit for outpatient therapy. Limited to sixty (60) visits per incident. Additional visits *[are subject to medical review]* may be allowed if showing significant improvement and recommended by case management.

(AA) Prescription Drugs—Insulin, syringes, test strips and glucometers are included in this coverage. There is no out-of-pocket maximum. Member is responsible only for the lesser of the applicable co-payment or the cost of the drug.

1. Ten dollar (\$10) co-pay for thirty (30)-day supply for generic drug on the formulary.

2. Twenty dollar (\$20) co-pay for thirty (30)-day supply for brand drug on the formulary.

3. *[Thirty dollar (\$30)] Thirty-five (\$35)* co-pay for thirty (30)-day supply for non-formulary drug.

4. Ninety (90)-day supply of *[maintenance]* medication for two (2) co-payments.

5. **Prescriptions filled with a brand drug when a generic is available will be subject to the generic co-payment amount and the member must also pay the difference in cost between the generic and brand drugs.**

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 12, 2000, effective Jan. 1, 2001, expired June 29, 2001. Original rule filed Dec. 12, 2000, effective June 30, 2001. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—Plan Options

EMERGENCY RESCISSON

22 CSR 10-2.065 Staff Model Summary of Medical Benefits. This rule established the policy of the board of trustees regarding the summary of medical benefits of the Staff Model under the Missouri Consolidated Health Care Plan.

PURPOSE: This rule is being rescinded to reflect changes in the Missouri Consolidated Health Care Plan.

EMERGENCY STATEMENT: It is imperative that this rule be rescinded immediately in order to maintain the integrity of the current health care plan. This emergency rescission must become effective January 1, 2002, in order that an immediate danger is not imposed on the public welfare. This rule is rescinded to reflect changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency rescission complies

with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency rescission is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency rescission filed December 17, 2001, becomes effective January 1, 2002, and expires on June 29, 2002.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 12, 2000, effective Jan. 1, 2001, expired June 29, 2001. Original rule filed Dec. 12, 2000, effective June 30, 2001. Emergency rescission filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—Plan Options

EMERGENCY AMENDMENT

22 CSR 10-2.067 /Staff Model/ HMO and POS Limitations. The board is amending the title and subsections (1)(J), (1)(S) and (1)(CC).

PURPOSE: The amendment includes changes made by the board of trustees regarding the limitations of the HMO/POS plans in the Missouri Consolidated Health Care Plan.

EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2002, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2002, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 17, 2001, becomes effective January 1, 2002, and expires on June 29, 2002.

(1) Benefits shall not be payable for, or in connection with, any medical benefit, services or supplies which do not come within the definition of covered charges, or any of the following:

(J) Hearing aids[.]—

- 1. HMO/POS—*L*/limited to bilateral hearing aids every two (2) years;
- 2. Staff model—Limited to bilateral hearing aids every three (3) years;

- (S) Out-of-network services without the proper referrals in an HMO [*including staff model*] are not covered services;
(CC) Skilled nursing services are limited to *one hundred (100) days annually (staff model)*, one hundred and twenty (120) days annually[(*HMO/POS*)];

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—Plan Options

EMERGENCY AMENDMENT

22 CSR 10-2.075 Review and Appeals Procedure. The board is amending subsection (5)(B).

PURPOSE: The amendment includes changes made by the board of trustees regarding the review and appeals procedure of the Missouri Consolidated Health Care Plan.

EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2002, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2002, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 17, 2001, becomes effective January 1, 2002, and expires on June 29, 2002.

(5) All insured members of the Missouri Consolidated Health Care Plan (MCHCP) shall use the claims and administration procedures established by the health maintenance organization (HMO), point-of-service (POS) or preferred provider organization (PPO) health plan contract applicable to the insured member. Only after these procedures have been exhausted may the insured appeal to the Missouri Consolidated Health Care Plan Board of Trustees to review the decision of the health plan contractor.

(B) The board may utilize a hearing officer, such as the Administrative Hearing Commission, to conduct a fact-finding hearing, make proposed findings of fact and conclusions of law.

1. The hearing will be scheduled by the MCHCP.
2. The parties to the hearing will be the insured and the applicable health plan contractor.

3. All parties shall be notified, in writing of the date, time and location of the hearing.

4. All parties shall have the right to appear at the hearing and submit written or oral evidence. The appealing party shall be responsible for all copy charges incurred by MCHCP in connection with any documentation that must be obtained through the MCHCP. These fees will be reimbursed should the party prevail in his/her appeal. They may cross-examine witnesses. They need not appear and may still offer written evidence. The strict rules of evidence shall not apply.

5. The party appealing to the board shall carry the burden of proof.

6. The independent hearing officer shall propose findings of fact and conclusions of law, along with its recommendation, to the board. Copies of the summary, findings, conclusions and recommendations shall be sent to all parties.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995, expired August 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. A proposed amendment covering the same material is published in this issue of the Missouri Register.

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rule-making process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

(Bracketed text indicates matter being deleted.)

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 110—Missouri Dental Board Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 110-2.170 Fees. The board is proposing to amend sections (1) and (2).

PURPOSE: *The Missouri Dental Board is statutorily obligated to enforce and administer the provisions of Chapter 332, RSMo. Pursuant to section 332.031.3, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 332, RSMo so that the revenue produced is sufficient, but not excessive, to*

cover the cost and expense to the board for administering the provisions of Chapter 332, RSMo. The Dental Well Being Committee was established pursuant to House Bill 343 of the 90th General Assembly and the Advisory Commission for Dental Hygienists was established pursuant to House Bill 567 of the 91st General Assembly.

This amendment also combines the application and initial licensure fees, allows the board to implement a biennial renewal and deletes the research and copying fees pursuant to section 610.026, RSMo which states fees for copying records shall not exceed the actual cost of document search and duplication.

(1) The following fees are established by the Missouri Dental Board:

(A) Application Fees*

1. Dentist (includes initial Missouri jurisprudence exam fee)	<i>[\$200.00]</i> \$230.00
2. Dental Specialist (includes initial specialist exam fee, if applicable)	<i>[\$300.00]</i> \$330.00
3. Dental Hygienist (includes initial Missouri jurisprudence exam fee)	<i>[\$125.00]</i> \$155.00

(I/C) Initial Licensure Fee (in addition to (1)(A) above)

1. Dentist	\$ 30.00
2. Dental Specialist	\$ 30.00
3. Dental Hygienist	\$ 30.00

(I/D) (C) [Annual] Biennial License Renewal Fee

1. Dentist License	<i>[\$115.00]</i> \$250.00
2. Dental Specialist License	<i>[\$125.00]</i> \$270.00
3. Dental Hygienist License	<i>[\$ 60.00]</i> \$130.00

(I/E) (D) Renewal Penalty Fee—Dentist/Dental

Specialist/Dental Hygienist	\$100.00
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(Renewal forms postmarked by the post office December 1 or after will be considered delinquent. Should November 30 fall on a Saturday, Sunday or legal holiday, renewal forms postmarked by the post office on the next business day will not be considered delinquent.)

(I/F) (E) Certification/Permit Fees

1. Dentists	
A. General Anesthesia	
(I) Permit Fee (per person per site)	\$100.00
(II) Renewal Fee (per person per site)	\$100.00
B. Parenteral Conscious Sedation	
(I) Permit Fee (per person per site)	\$100.00
(II) Renewal Fee (per person per site)	\$100.00
2. Dental Hygienists	
A. Administration of Nitrous Oxide Analgesia	\$ 10.00
B. Local Anesthesia	\$ 10.00
3. Dental Assistants	
A. Monitoring Nitrous Oxide Analgesia	\$ 10.00

(I/G) (F) Miscellaneous Fees

1. Corporation Name Approval	\$ 15.00
2. Verification of Licensure—Dentist/Dental Specialist/Dental Hygienist	\$ 20.00
3. Duplicate Original Certificate	\$ 50.00
4. Photocopies of Records	
<i>(initial page)</i>	\$ 1.00
5. Photocopies of Records	
<i>(per copy page thereafter)</i>	\$.50
6. Research <i>(per hour of staff time requiring more than one (1) hour for researching and making copies of board records)</i>	\$ 10.00/
4. Duplicate Renewal License (over two (2) per duplicate)	\$5.00
5. Uncollected Fee (for any uncollectible check or other uncollectible financial instrument)	\$ 25.00

* All application fees authorized by the Missouri Dental Board include the fee for the initial jurisprudence examination, the initial specialist examination fee, if applicable, and the initial licensure fee.

(3) All licenses will be renewed *(annually)* biennially and will expire on November 30 of each even-numbered year.

AUTHORITY: section 332.031.3, RSMo [Supp. 1997] 2000. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 6, 1981. Original rule filed June 30, 1981, effective Oct. 11, 1981. For intervening history, please consult Code of State Regulations. Amended: Filed Dec. 14, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities an estimated ninety-seven thousand four hundred forty dollars (\$97,440) biennially and five thousand two hundred thirty dollars (\$5,230) annually for the life of the rule. It is anticipated that the total cost for private entities will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Dental Board, Sharlene Rimiller, Executive Director, PO Box 1367, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 4 – Department of Economic Development

Division: 110 – Missouri Dental Board

Chapter: 2 – General Rules

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 4 CSR 110-2.170 Fees

Prepared November 29, 2001 by the Division of Professional Registration and the Missouri Dental Board

II. SUMMARY OF FISCAL IMPACT

Biennial Costs

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate annual cost of compliance with the rule by the affected entities:
3,122	Licensed Dentists (Biennial License Renewal -\$20 increase)	\$62,440
603	Licensed Dental Specialists (Biennial License Renewal \$20 increase)	\$12,060
2,294	Licensed Dental Hygienists (Biennial License Renewal -\$10 increase)	\$22,940
Total annual cost of compliance for the life of the rule		\$97,440.00

Annual Costs

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate annual cost of compliance with the rule by the affected entities:
1,046	Licensed Dentists, Dental Specialists and Hygienists (Duplication of Original License - \$5)	\$5,230
Total annual cost of compliance for the life of the rule		\$5,230

III. WORKSHEET

See table above.

IV. ASSUMPTIONS

- The board is implementing a biennial renewal for it licensees and increasing biennial renewal fees by \$20 for dentists and dentist specialists and \$10 for dental hygienists. The calculations shown in the table above reflect only those increases.
- The Dental Well Being Committee was established pursuant to House Bill 343 of the 90th General Assembly and the Advisory Commission for Dental Hygienists was established pursuant to House Bill 567 of the 91st General Assembly.
- It is anticipated that the total annual cost will recur each year for the life of the rule, may vary with inflation and is expected to decrease annually at the rate projected by the Legislative Oversight Committee.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**
Division 110—Missouri Dental Board
Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 110-2.240 Continuing Dental Education. The board is proposing to amend subsection (1)(B), section (2), subsection (2)(A), (2)(C), and (2)(H), sections (3), (4), and (5), and add new language in section (6).

PURPOSE: This amendment adjusts the continuing education requirements in order to comply with a biennial renewal.

(1) Definitions.

(B) Time block—*[A three (3)-year time period with starting dates of December 1, 1993 through November 30, 1996; December 1, 1996 through November 30, 1999; December 1, 1999 through November 30, 2002] A two (2)-year period with starting dates of December 1, 2002 through November 30, 2004; December 1, 2004 through November 30, 2006 and repeating in this sequence from that date.*

(2) *[The board shall not issue a renewal of a dental or dental hygiene license unless the licensee completes and reports (on forms provided by the board) a total of seventy-five (75) hours and forty-five (45) hours of continuing dental education respectively at the conclusion of each time block.] In order to renew a license, each dentist shall submit satisfactory evidence of completion of fifty (50) hours of continuing education during the two (2)-year period immediately preceding the renewal period and each dental hygienist shall submit satisfactory evidence of completion of thirty (30) hours of continuing education during the two (2)-year period immediately preceding the renewal period.* Any hours acquired beyond the required number may be carried forward into the next time block not to exceed twenty-five (25) hours for dentists and fifteen (15) hours for dental hygienists. Of the *[seventy-five (75)] fifty (50)* hours required for dentists, not less than *[sixty (60)] forty (40)* must be hours directly related to the updating and maintaining of knowledge and skills in the treatment, health and safety of the individual dental patient. Of the *[forty-five (45)] thirty (30)* hours required for dental hygienists, not less than *[thirty-five (35)] twenty-five (25)* must be hours directly related to the updating and maintaining of knowledge and skills in the treatment, health and safety of the individual dental patient. One (1) hour of continuing education shall be granted for every fifty to sixty (50–60) minutes of contact (either academic or clinical) instruction.

(A) For the licensure renewal form due *[November 30, 1994] November 30, 2004*, and each subsequent renewal *[form year] period* after that, the licensee shall report the number of hours obtained for the *[year] two (2)-year period* just completed and shall attest to those hours by signing the form. Each licensee shall retain records documenting his/her completion of the required hours of continuing education for a minimum of six (6) years after the reporting period in which the continuing education was completed. The records shall document the licensee's attendance at the continuing education course including, but not limited to, retaining the titles of the courses taken, dates, locations, receipts, course sponsors, agendas and number of hours earned. The board may conduct an audit of licensees to verify compliance with the continuing education requirement. Licensees shall assist the board in its audit by providing timely and complete responses to the board's inquiries.

(C) A credential dental licensee will **only** be required to obtain *[either fifty (50) hours or]* twenty-five (25) hours of continuing education *[depending on whether]* in order to renew if the

individual became licensed *[before]* **during** the second *[or third]* year of the time block. A credential hygiene licensee will **only** be required to obtain *[either thirty (30) hours or]* fifteen (15) hours of continuing education *[depending on whether]* **in order to renew** if the individual became licensed *[before]* **during** the second *[or third year]* of the time block.

(H) A dental licensee who has obtained diplomate status through the ADA-recognized specialty board certification during the reporting period shall be deemed to have obtained *[seventy-five (75)] fifty (50)* hours of continuing education. The licensee shall provide the board with documentation evidencing the specialty board certification upon request.

(3) The board, solely in its discretion, may grant a **waiver or extension** to a licensee who cannot complete the required hours of continuing education because of personal illness, military service, **foreign residency** or other circumstances beyond the licensee's control. The licensee may apply for a **waiver or extension** of time to complete the continuing education requirements by making a written application at least forty-five (45) days before the end of the renewal period. *[The]* Any licensee seeking a **waiver or extension** shall provide full and complete written documentation explaining specifically and in detail the nature of the circumstances, why the circumstances were unforeseeable and beyond the licensee's control, the period during which the circumstances were in existence, the number of continuing education hours earned in the reporting period and the licensee's plan for completing the balance of the requirements **if an extension is granted**. The board, in its discretion, shall establish the length of extension granted, not to exceed the next renewal period.

(4) To reinstate the license of a dentist or dental hygienist whose license has been noncurrent for any reason, including retirement, for a period of *[two (2)] four (4)* years or less, that person shall obtain, in addition to any other requirements of law, all the continuing education that would have been required if the license had been current and active during that period. To reinstate the license of any dentist or dental hygienist whose license has been in a non-current state for any reason, including retirement for more than *[two (2)] four (4)* years, that person shall comply with the Missouri Dental Board rules as well as any other requirements for relicensure under Chapter 332, RSMo.

(5) Violation of any provision of this rule shall be deemed by the board to constitute misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional, or any combination of these, in the performance of the functions, duties, or both, of a dentist or a dental hygienist, depending on the licensee's conduct. In addition, a licensee who fails to complete and report in a timely fashion the required hours of continuing education and engages in the practice of dentistry or dental hygiene without the express written consent of the board shall be deemed to have engaged in the unauthorized practice of dentistry or dental hygiene.

[A] (6) Continuing education required by the board as part of discipline imposed on a licensee shall not count toward compliance with the continuing education requirement of this rule.

[B] All continuing education coursework taken on or after December 1, 1993, shall count toward the continuing education requirements of this rule.]

AUTHORITY: sections 332.031, *[RSMo Supp. 1997 and] 332.181 and 332.261, RSMo [1994] 2000. Original rule filed Aug. 30, 1993, effective April 9, 1994. Amended: Filed June 27, 1995, effective Dec. 30, 1995. Amended: Filed Sept. 15, 1998, effective April 30, 1999. Amended: Filed Dec. 14, 2001.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Dental Board, Sharlene Rimiller, Executive Director, PO Box 1367, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**
Division 210—State Board of Optometry
Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 210-2.030 [Annual] License Renewal. The board is proposing to amend the title of the rule, sections (4), (5), (6), (7), (9), (10), (11) and subsection (10)(D).

PURPOSE: The purpose of this amendment allows the board to implement a biennial renewal.

(4) A period of sixty (60) days/¹/ grace is established following the date by which every registered optometrist must renew his/her certificate of registration. The board shall cause a certificate to be renewed if the renewal is sought and fees are paid before the expiration of the grace period. No certificate shall be renewed after the grace period unless, within five (5) years, the holder submits the required reactivation fee plus satisfactory evidence of his/her attendance, for a minimum of twenty-four (24) hours, at education programs approved by the board.

(5) Every optometrist currently licensed in Missouri shall obtain, during each continuing education reporting period, a minimum of ^[eight (8)]sixteen (16) hours of approved continuing education (herein "C.E." credits) relevant to the practice of optometry. **A licensee shall obtain no less than eight (8) hours of approved continuing education during the first year of the continuing education reporting period and no less than eight (8) hours of approved continuing education in the second year of the reporting period.**

(6) The continuing education reporting period shall begin ^[each year]on September 1 and end on August 31 ^{of each even-numbered year}. C.E. credits earned after August 31 ^{of each even-numbered year} shall apply to the next reporting cycle unless the licensee pays the continuing education penalty fee. Payment of the continuing education penalty fee will provide a licensee with the ability to earn C.E. credits ^[after August 31 but prior to January 1] between September 1 and December 31 of that even-numbered year. In any odd-numbered year, C.E. credits earned between September 1 and December 31 of that year may apply to the first year of the continuing education reporting period if the licensee pays the continuing education penalty fee. A renewal license will not be issued until all renewal requirements have been met. If the licensee pays the continuing education penalty fee for C.E. credits earned late, those credits shall not be applied to the next reporting cycle.

(7) ^{[For the license renewal due on September 1, 1999, and each subsequent renewal thereafter, the]/}Licenses shall report the number of C.E. credits earned during the ^[preceding] continuing education reporting period on ^[a continuing education report] the renewal form provided by the board. ^{[The}

continuing education report form shall be mailed, or faxed, directly to the board office on or before August 31 of each year, or as soon thereafter as possible but by no later than the end of the renewal period (October 31).] The licensee shall not submit the record of C.E. attendance to the board except in the case of a board audit.

(9) Violation of any provision of this rule shall be deemed by the board to constitute misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of an optometrist depending on the licensee's conduct. In addition, a licensee who has failed to complete and report in a timely fashion the required ^[eight (8)]sixteen (16) hours of continuing education and engages in the active practice of optometry without the express written authority of the board shall be deemed to have engaged in the unauthorized practice of optometry.

(10) The following guidelines govern the attendance of educational optometric programs for ^[annual] license renewal:

(D) With the exception of any of the previously mentioned educational organizations, any other regularly organized group of optometrists that wishes to sponsor an educational program to meet the standard for ^[annual] license renewal in Missouri shall submit two (2) copies of the program schedule and outline to the board's executive director not fewer than sixty (60) days prior to the date of the program **and shall pay the continuing education sponsor fee.** The outline must indicate the program's subject matter, the number of hours required for its presentation and the identity and qualifications of the speakers and instructors. The board shall review the schedule and outline. If the program meets the standards set out in subsections (10)(A)-(B), the board may grant approval. The board will not consider requests for approval of any program submitted following the meeting; and

(11) The license renewal period shall commence on November 1 ^[of each year] and end on October 31 of each **even-numbered** year.

AUTHORITY: sections 336.080 and 336.160.1, RSMo [1994] 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 14, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate as the board is merely implementing a biennial renewal for its licensees.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Optometry, Sharlene Rimiller, Executive Director, PO Box 1335, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**
Division 210—State Board of Optometry
Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 210-2.070 Fees. The board is amending section (1).

PURPOSE: This amendment establishes the fees for biennial renewals and deletes the research and copying fees pursuant to section 610.026, RSMo which states fees for copying records shall not exceed the actual cost of document search and duplication.

(1) The following fees are established by the State Board of Optometry:

(D) Biennial Renewal Fee	[\$ 110.00] \$220.00
I(M) Photocopies of Records Fee (initial page)	\$ 1.00
(N) Photocopies of Records Fee (per copy after one (1))	\$.25
(O) Research Fee (per hour, requiring more than one (1) hour of staff time)	\$ 10.00]
I(P) (M) Uncollectible Fee (uncollectible check or other uncollective financial instrument)	\$ 25.00
I(Q) (N) Law Book Requests Fee	\$ 5.00***
I(R) (O) IAnnual Biennial Continuing Education Sponsor Fee	\$ 25.00
I(S) (P) Continuing Education Penalty Fee (reporting continuing education hours obtained after the end of the reporting period)	\$ 50.00

**When administered separately from the National Board of Examiners in Optometry (NBEO) *[Clinical Skills/Visual Recognition and Interpretation of Clinical Signs (VRICS)]* Patient Assessment and Management (PAM) exam.

AUTHORITY: section 336.160, RSMo [1994] Supp. 2001. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 11, 1981. Original rule filed June 30, 1981, effective Oct. 12, 1981. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 14, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate as the board is merely implementing a biennial renewal for its licensees.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Optometry, Sharlene Rimiller, Executive Director, PO Box 1335, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 240—Public Service Commission Chapter 2—Practice and Procedure

PROPOSED RULE

4 CSR 240-2.045 Electronic Filing

PURPOSE: This rule prescribes the procedure for electronic filing before the commission.

(1) Any item or document otherwise required or permitted to be filed with the commission may be filed electronically by accessing the commission's Internet web site and following the instructions for electronic filing found there.

(2) Any item or document filed electronically shall, if received during business hours of the commission's records room, be considered filed as of that day, otherwise, such item or document shall be considered filed as of the next following business day.

(3) The electronic filing of an item or document as described in this rule shall satisfy an obligation to file the same if accomplished no later than the date upon which such filing is required.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 7, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. Comments should refer to Case No. AX-2002-156 and be filed with an original and six (6) copies. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 240—Public Service Commission Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.075 Intervention. The commission is amending section (6) and adding a new section (7).

PURPOSE: The purpose of this amendment is to clarify the proceedings applicable to *amicus curiae* and to impose on intervenors an obligation to file a responsive pleading.

(6) Any person not a party to a case may petition the commission for leave to file a brief as an *amicus curiae*. The petition for leave must state the petitioner's interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are relevant to the determination of the case. The brief may be submitted simultaneously with the petition for leave. Except by leave of the commission, the brief must be filed no later than seven (7) days after the parties have filed their initial briefs. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.

(7) Any party whose application to intervene is granted shall, within thirty (30) days thereafter or such other period as the commission may order, file a responsive pleading to the application, complaint or tariff that is the subject of the contested case, specifically admitting or denying each fact asserted therein.

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. Comments should refer to Case No. AX-2002-157 and be filed with an original and six (6) copies. No public hearing is scheduled.

(E) If a nonunanimous stipulation and agreement resolves only issues as to which a party has stated no position and filed no testimony, such party need not join in the nonunanimous stipulation and agreement for it to be considered unanimous and an objection filed by such party shall have no effect.

[(3) A nonunanimous stipulation and agreement shall be filed as a pleading. Each party shall have seven (7) days from the filing of the nonunanimous stipulation and agreement to file a request for a hearing. Failure to file a timely request for hearing shall constitute a full waiver of that party's right to a hearing.]

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed June 9, 1987, effective Sept 15, 1987. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Dec. 7, 2001.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.115 [Nonunanimous] Stipulations and Agreements. The commission is changing the title of the rule, amending sections (1) and (2) and deleting section (3).

PURPOSE: The purpose of this amendment is to clarify the proceedings applicable to, and the effects of, stipulations and agreements in commission practice.

(1) [A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all parties and where one (1) or more parties requests a hearing of one (1) or more issues. If no party requests a hearing, the commission may treat the stipulation and agreement as a unanimous stipulation and agreement.] Stipulations and Agreements.

(A) The parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case. Any such stipulation and agreement must contain stipulated facts sufficient to support the resolution proposed by the parties. A stipulation and agreement shall be filed as a pleading.

(B) The commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.

(2) [If a hearing is requested, the commission shall grant the request.] Nonunanimous Stipulations and Agreements.

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing. A conditional assent to a nonunanimous stipulation and agreement shall be regarded as a non-conditional assent and not as an objection.

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. Comments should refer to Case No. AX-2002-158 and be filed with an original and six (6) copies. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED RULE

4 CSR 240-2.117 Summary Disposition of Contested Cases

PURPOSE: This rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.

(1) Summary Determination.

(A) Any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a contested case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than twenty (20) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

(C) Not more than ten (10) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

(D) For good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.

(E) The commission shall grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact and that any party is entitled to relief as a matter of law as to all or any part of the contested case. The commission may order summary determination against the moving party. An order granting summary determination shall include findings of fact and conclusions of law.

(F) If the commission grants a motion for summary determination, but does not dispose thereby of the entire contested case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for purposes of the hearing.

(G) The commission may hear oral argument on a motion for summary determination.

(2) Determination on the Pleadings—On its own motion or on the motion of any party, the commission may dispose of all or any part of a contested case on the pleadings whenever such disposition is not otherwise contrary to law.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 7, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. Comments should refer to Case No. AX-2002-159 and be filed with an original and six (6) copies. No public hearing is scheduled.

Title 9—DEPARTMENT OF MENTAL HEALTH Division 10—Director, Department of Mental Health Chapter 7—Core Rules for Psychiatric and Substance Abuse Programs

PROPOSED AMENDMENT

9 CSR 10-7.020 Rights, Responsibilities, and Grievances. The department proposes to delete section (8) and renumber section (9).

PURPOSE: This amendment removes the language on surrogates to avoid potential legal conflicts.

/(8) Surrogate Decision Maker. The organization's policies, procedures and practices shall ensure an opportunity for the individual to designate or establish a surrogate decision maker, in the event the individual may become incapable of understanding or unable to communicate his or her wishes regarding the treatment plan or a proposed service.]

/(9)] (8) Practices to Promote Safety and Well-Being. The organization shall demonstrate a commitment to the safety and well-being of the individuals it serves. The organization's policies, procedures and practices shall—

(A) Promote therapeutic progress by addressing matters such as medication compliance, missed appointments, use of alcohol and drugs, and other program expectations or rule;

(B) Encourage appropriate behavior by providing positive instruction and guidance; and

(C) Ensure safety by effectively responding to any threats of suicide, violence or harm. Any use of seclusion or restraint shall be in accordance with 9 CSR 10-7.060 Behavior Management.

AUTHORITY: sections 630.050 and 630.055, RSMo 2000. Original rule filed Feb. 28, 2001, effective Oct. 30, 2001. Amended: Filed Dec. 12, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Dewey Price, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 9—DEPARTMENT OF MENTAL HEALTH Division 10—Director, Department of Mental Health Chapter 7—Core Rules for Psychiatric and Substance Abuse Programs

PROPOSED AMENDMENT

9 CSR 10-7.030 Service Delivery Process and Documentation. The department proposes to amend paragraph (1)(A)2.

PURPOSE: This amendment eliminates the requirement for programs to provide supports for persons that have not been admitted to substance abuse treatment.

(1) Screening. Each individual requesting services shall have prompt access to a screening in order to determine eligibility and to plan an initial course of action, including referral to other services and resources, as needed.

(A) At the individual's first contact with the organization (whether by telephone or face-to-face contact), any emergency or urgent service needs shall be identified and addressed.

1. Emergency service needs are indicated when a person presents a likelihood of immediate harm to self or others. A person who presents at the program site with emergency service needs

shall be seen by a qualified staff member within fifteen (15) minutes of presentation. If emergency service needs are reported by telephone, the program shall initiate face-to-face contact within one (1) hour of telephone contact or shall immediately notify local emergency personnel capable of promptly responding to the report.

2. Urgent service needs are indicated when a person presents a significant impairment in the ability to care for self but does not pose a likelihood of immediate harm to self or others. A person with urgent service needs shall be seen within forty-eight (48) hours, or the program shall *make appropriate arrangements to provide for necessary supports until the person can be seen for screening/ provide information about treatment alternatives or community supports where available.*

3. Routine service needs are indicated when a person requests services or follow-up but otherwise presents no significant impairment in the ability to care for self and no apparent harm to self or others. A person with routine service needs should be seen as soon as possible to the extent that resources are available.

AUTHORITY: sections 630.050 and 630.055, RSMo 2000.
Original rule filed Feb. 28, 2001, effective Oct. 30, 2001.
Amended: Filed Dec. 12, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Dewey Price, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 9—DEPARTMENT OF MENTAL HEALTH Division 25—Fiscal Management Chapter 2—Purchase of Service Contracting

PROPOSED AMENDMENT

9 CSR 25-2.505 Protest and Appeal Procedures. The department is amending the purpose, removing sections (1) through (8) and adding three new sections.

PURPOSE: This amendment will clarify and simplify the protest and appeals procedures.

PURPOSE: [This rule prescribes procedures for offerors to protest or appeal departmental actions taken under this chapter.] This rule prescribes procedures for offerors to protest the department's competitive Request for Proposal solicitation process and/or appeal a department decision regarding the award of contract(s), as a result of a competitive Request for Proposal process.

[(1) An aggrieved offeror or provider may protest the solicitation process used in issuing a request for a proposal (RFP), appeal an award of a contractual agreement with a provider, or protest or appeal any other decision of the department. The aggrieved offeror or provider shall protest or appeal, in writing, to the director of the division for which the services are to be purchased (that is, directors of the Division of Mental Retardation and Developmental Disabilities, Division of Comprehensive Psychiatric

Services or Division of Alcohol and Drug Abuse) within ten (10) working days of the receipt of any department determination, RFP, award or contractual agreement of which aggrieved, except that in the case of award of contractual agreements for alcohol and drug abuse services, appeals shall be directed to the department director within five (5) working days of notification of the award. A notice of award for alcohol and drug abuse services shall be sent to the successful and unsuccessful offerors by registered mail.

(2) Upon receipt or a protest prior to award the decision to award shall be suspended until the protest is resolved. If an appeal of an award decision is received by the department and the appeal results in a cancellation of the prior award decision and the issuance of a new award, the department shall give notice of cancellation to the holder of the original award by the terms of the contract and the new award shall be effective upon the termination of the original award contract.

(3) The division director shall consult with the deputy director of administration (mental health) within ten (10) working days of receipt of the protest or appeal and shall issue a decision, in writing, to the involved parties. Within five (5) working days of receipt of a protest or appeal of an alcohol and drug abuse services contract award, the department director shall issue a decision in writing to the involved parties which shall be final.

(4) Any offeror or provider protesting or appealing under this rule shall include the name and address of the provider or offeror aggrieved, the RFP number, the complaint of the department action and (if awarded) the number of the contractual agreement. The offeror or provider shall state the grounds for the protest or appeal, include any supporting documentation to substantiate any claims made and specify the relief requested from the division/department director. If the documentation has not been provided to the aggrieved provider or offeror in time to protest or appeal as set out in this rule, the aggrieved offeror or provider shall indicate the expected availability date for providing the documentation.

(5) Within ten (10) working days of receipt of the appeal of the division director's decision, the department director shall issue a decision which shall be final.

(6) If the provider or offeror finds the decision to be unacceptable, the provider or offeror may appeal the division director's decision to the department director within ten (10) working days after receiving the division director's decision.

(7) If an aggrieved offeror or provider appeals the division director's decision, the aggrieved offeror or provider shall state the reasons why the division director's decision was not acceptable and why the aggrieved offeror or provider is appealing the division director's decision to the department director.

(8) At each step of the protest or appeal procedure in this rule, the element of time shall be measured by date stamp (or date plus initials, if no stamp) for date of receipt and postmark on envelope for date of issuance.]

(1) An aggrieved offeror may protest the solicitation process performed by the department with a competitive Request for Proposal (RFP).

(A) The aggrieved offeror shall issue a protest of the solicitation process, in writing, to the department's contract coordinator in the Office of Administration (Mental Health). The aggrieved offeror must submit the protest with reasonable promptness to their notice of the complaint and prior to the date of contract award.

(B) Any offeror protesting a solicitation process under this rule shall include in their written protest the name and address of the offeror aggrieved, the RFP number and their complaint of the solicitation process. The offeror shall include support documentation to substantiate any claims made and specify the relief requested from the department.

(C) Upon receipt of protest the contracts coordinator shall consult with the deputy director of administration (Mental Health). Upon the finding of facts the department shall take appropriate action and issue a written response to the involved parties within ten (10) state working days of receipt of the protest. The department's written response shall be final.

(2) An aggrieved offeror may appeal a department decision regarding the award of contract(s), as a result of a competitive Request for Proposal process.

(A) The aggrieved offeror shall issue an appeal of a contract award, in writing, to the director of the division for which the services are to be purchased (directors of the Division of Mental Retardation and Developmental Disabilities, Division of Comprehensive Psychiatric Services or Division of Alcohol and Drug Abuse) within ten (10) state working days of the department's issuance of a notice of contract award, of which aggrieved.

(B) Any offeror appealing a contract award under this rule shall include in their written appeal the name and address of the offeror aggrieved, the RFP number, the name of the contract awardee and their complaint. The offeror shall state the specific grounds for the appeal and include supporting documentation.

(C) Upon receipt of an appeal the division director shall consult with the deputy director of administration (Mental Health) and shall issue a written response to the involved parties within fifteen (15) state working days of receipt of the appeal. The division director's written response shall be a decision to accept or reject the appeal.

(D) If the offeror finds the written response of the division director to be unacceptable, the offeror may issue an appeal of the decision, in writing, to the department director within ten (10) state working days after the issuance of the division director's written response.

(E) If an aggrieved offeror appeals the division director's response, the aggrieved offeror shall state the specific reasons why the response was not acceptable and why the aggrieved offeror is appealing the response to the department director.

(F) Within fifteen (15) state working days of receipt of the offeror's appeal of the division director's response, the department director shall issue a written response to the involved parties. The department director's written response shall be a decision to accept or reject the appeal. The department director's written response shall be final.

(3) At each step of the protest or appeal procedure the element of time shall be measured by date stamp or registered mail receipt for the date of receipt and U.S. mail postmark for the date of issuance.

AUTHORITY: sections 34.100, 630.050 and 630.405, RSMo 2000. Original rule filed Oct. 16, 1986, effective July 13, 1987. Emergency amendment filed May 15, 1990, effective May 25,

1990, expired Sept. 21, 1990. Amended: Filed Aug. 14, 1990, effective March 14, 1991. Amended: Filed Dec. 12, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to John Long, Office of Administration, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES

Division 25—Hazardous Waste Management Commission

Chapter 3—Hazardous Waste Management System: General

PROPOSED AMENDMENT

10 CSR 25-3.260 Definitions, Modifications to Incorporations and Confidential Business Information. The commission is amending section (3).

PURPOSE: Senate Bill 577 was passed by the 2000 General Assembly. Part of the bill requires applicants for a hazardous waste transporter license to pay a fee consisting of an annual application fee, plus an annual use fee based upon tonnage, mileage, or a combination of both. Currently, license applicants pay a fee that is calculated on a flat "per vehicle" basis. There were two (2) reasons for changing the method by which the license fee is calculated. First, flat "per vehicle" fees have been successfully challenged in other states because they favor in-state transporters over out-of-state transporters. For example, a vehicle operating exclusively in Missouri throughout the year is assessed the same per vehicle fee as a vehicle only coming to Missouri once or twice a year. The intent of utilizing a use-based fee is to apportion the fee that a hazardous waste transporter pays based upon the actual amount of hazardous waste transported to, from, or through Missouri. Second, the change in calculation of the license fee was intended to increase the total revenues generated by hazardous waste transporter license fees from approximately three hundred fifty thousand dollars (\$350,000) annually to approximately six hundred thousand dollars (\$600,000) annually, as authorized by Senate Bill 577. This increase in revenue is attributed to the fact that transportation-related incidents account for a significant percentage of the department's emergency response costs and is intended to more fairly apportion these costs.

Portions of three (3) existing regulations contain language that reflects the current system of licensing transporters on a per vehicle basis. Each regulation must be amended to implement the new system. The Hazardous Waste Program is now prepared to propose the necessary amendments to the existing regulations.

(3) Missouri Specific Definitions. Definitions of terms used in 10 CSR 25. This section sets forth definitions which modify or add to those definitions in 40 CFR parts 60, 260-270, 273 and 279, and 49 CFR parts 40, 171-180, 383, 387 and 390-397.

(H) Definitions beginning with the letter H.

1. HSWA means the Hazardous and Solid Waste Amendments of 1984. These amendments were made to the Resource Conservation and Recovery Act by P.L. 98-616, November 8, 1984.

2. Hazardous constituent means any chemical compound listed in 40 CFR part 261 Appendix VIII as incorporated in 10 CSR 25-4.261. (This is different than the term hazardous waste constituent as defined in 40 CFR 260.10.)

3. Hazardous waste means any waste or combination of wastes as defined by or listed in 10 CSR 25-4, which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a threat to the health of humans or other living organisms.

4. Hazardous waste transporter means any person or company conducting activities in Missouri which require a hazardous waste transporter license pursuant to 10 CSR 25-6.263. These activities may include, but are not limited to, transportation of hazardous wastes, used oil and infectious wastes by highway, railway or waterway.

/4./ 5. Holocene means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene period to the present, approximately the previous twelve thousand (12,000) years.

/5./ 6. Household hazardous waste means any household waste excluded from regulation as hazardous waste by 40 CFR 261.4(b)(1) but otherwise meets the definition of hazardous waste in paragraph (2)(H)3. of this rule.

(I) Definitions beginning with the letter I.

1. Identification number means the unique code assigned to each hazardous waste, each hazardous waste generator, transporter, facility or resource recovery facility pursuant to these rules.

2. International Registration Plan, referred to as IRP, is a system of reporting and apportioning fees to states and other jurisdictions based on the percentage of mileage accumulated while conducting business in those states or jurisdictions.

(M) Definitions beginning with the letter M.

1. Manifest means the shipping document form EPA 8700-22/MDNR-HWG 10 or EPA form 8700-22 which, in accordance with 10 CSR 25-5.262, shall be initiated by the generator.

2. Manifest document number means the U.S. EPA twelve (12)-digit identification number and the Missouri generator identification number assigned to the generator plus a consecutive five (5)-digit document number assigned to the manifest by the generator for recording and reporting purposes. (Note: These items are explained in the Missouri manifest instructions.)

3. Missouri hazardous waste mileage means the total fleet miles that materials requiring a hazardous waste transporter license are transported in Missouri over a period specified by rule. Additionally, all miles traveled transporting containers with residues of these materials, as defined at 49 CFR 171.8, will be included in the Missouri hazardous waste mileage.

/3./4. Motor vehicle means a vehicle, machine, tractor, trailer or semitrailer or any combination of them, propelled or drawn by mechanical power and used upon the highways in transportation. It does not include a vehicle, locomotive or car operated exclusively on a rail(s).

(P) Definitions beginning with the letter P.

1. Post-closure disposal facility means a hazardous waste management facility which has disposed of hazardous waste, and which is required by applicable state and federal laws and regulations to have a permit to conduct post-closure activities, or to perform necessary post-closure activities under an enforceable document, as defined in 40 CFR 270.1(c)(7) and incorporated by reference in 10 CSR 25-7.270(1).

2. Professional engineer or registered engineer means a professional engineer licensed to practice by the Missouri Board of Architects, Professional Engineers and Land Surveyors.

3. Power unit for the purpose of this regulation is a truck with at least two (2) axles, regardless of licensed vehicle weight or configuration.

4. Preceding year is defined as the period of twelve (12) consecutive months immediately prior to July 1 immediately preceding the commencement of the license year for which license is sought.

(T) Definitions beginning with the letter T.

1. Training means formal instruction which supplements an employee's existing job knowledge and is designed to protect human health and the environment through increased awareness and improved job proficiency.

2. Transporter; see hazardous waste transporter.

/2./ 3. True vapor pressure means the pressure exerted when a solid or liquid is in equilibrium with its own vapor. The vapor pressure is a function of the substance and of the temperature.

/3./ 4. Twenty-four (24)-hour, twenty-five (25)-year storm means a storm of twenty-four (24)-hour duration for which the frequency of occurrence is once in twenty-five (25) years.

(V) Definitions beginning with the letter V.

1. Vapor recovery system means a system capable of collecting vapors and discharged gases and a vapor processing system capable of processing those vapors and gases so as to control emission of contaminants to the atmosphere. Emission not retained by vapor recovery systems, except for emissions regulated in 10 CSR 25, are regulated by rules adopted by the Missouri Air Conservation Commission, 10 CSR 10.

2. /Vehicle means a motor vehicle, rail car, vessel (as defined in 49 CFR 171.8) or aircraft used for the transportation of hazardous waste by any mode. Each cargo-carrying body (trailer, railroad freight car and so forth) is a separate vehicle/ Vehicle, for the purpose of this regulation, refers to a power unit.

AUTHORITY: section 260.370 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on February 19, 2002 at the Department of Natural Resources Elm Street Conference Center, 1738 E. Elm, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at P.O. Box 176, Jefferson City, MO, 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on February 5, 2002. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written comments must be postmarked by midnight on March 1, 2002. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the rules coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management
Commission
Chapter 6—Rules Applicable to Transporters of
Hazardous Waste

PROPOSED AMENDMENT

10 CSR 25-6.263 Standards for Transporters of Hazardous Waste. The commission is amending subsections (2)(A) and (2)(D).

PURPOSE: Senate Bill 577 was passed by the 2000 General Assembly. Part of the bill requires applicants for a hazardous waste transporter license to pay a fee consisting of an annual application fee, plus an annual use fee based upon tonnage, mileage, or a combination of both. Currently, license applicants pay a fee that is calculated on a flat "per vehicle" basis. There were two (2) reasons for changing the method by which the license fee is calculated. First, flat "per vehicle" fees have been successfully challenged in other states because they favor in-state transporters over out-of-state transporters. For example, a vehicle operating exclusively in Missouri throughout the year is assessed the same per vehicle fee as a vehicle only coming to Missouri once or twice a year. The intent of utilizing a use-based fee is to apportion the fee that a hazardous waste transporter pays based upon the actual amount of hazardous waste transported to, from, or through Missouri. Second, the change in calculation of the license fee was intended to increase the total revenues generated by hazardous waste transporter license fees from approximately three hundred fifty thousand dollars (\$350,000) annually to approximately six hundred thousand dollars (\$600,000) annually, as authorized by Senate Bill 577. This increase in revenue is attributed to the fact that transportation-related incidents account for a significant percentage of the department's emergency response costs and is intended to more fairly apportion these costs.

Portions of three (3) existing regulations contain language that reflects the current system of licensing transporters on a per vehicle basis. Each regulation must be amended to implement the new system. The Hazardous Waste Program is now prepared to propose the necessary amendments to the existing regulations.

(2) A hazardous waste transporter shall comply with the requirements of this section in addition to those set forth in section (1). Any reference to a 40 CFR cite in this section shall mean as that provision is incorporated in 10 CSR 25. Where contradictory or conflicting requirements exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized in order within the corresponding subsection of this section. For example, the additional requirements being added to 40 CFR part 263 subpart A are found in subsection (2)(A).)

(A) In addition to the requirements in 40 CFR part 263 subpart A, the following shall apply:

1. I 40 CFR 263.10(a) and (c)(1), incorporated in this rule, substitute "the state of Missouri" for "United States";

2. In the last paragraph of the note following 40 CFR 263.10(a), change "49 CFR parts 171 through 179" to "49 CFR parts 171 through 180 and parts 383, 387 and 390-397" and add the following to the note: "The parts of 49 CFR are incorporated to the extent that these regulations do not conflict with the laws and regulations of the state of Missouri, or, in the event the regulations conflict, the more stringent shall control. The equipment used in the transportation of hazardous waste shall meet the standards of the Missouri Department of Economic Development's /Division of Transportation/ Division of Motor Carrier and Railroad Safety, the United States Department of Transportation, or any combination of them, the Federal Railroad Administration, as applicable for the types of hazardous materials for which it will be

used. The equipment to be used in the transportation of hazardous waste shall be compatible with that waste and shall be adequate to protect the health of humans and prevent damage to the environment";

3. License requirements for *[motor vehicle operators]* power unit transporters of hazardous waste, used oil or infectious waste. Transporters required by 10 CSR 25-6.263, 10 CSR 25-11.279(2)(E)1., or 10 CSR 80-7.010(4) to be licensed by the department shall comply with the following requirements:

A. *[Motor vehicle operators]* Power unit transporters shall submit to the department an application for a license on a form furnished by the department. The form shall be completed with the following information:

(I) The applicant's name, address, location of the principal office or place of business and the legal owner of the applicant company;

(II) A description of the service proposed to be rendered;

(III) The applicant's Environmental Protection Agency (EPA) identification number;

(IV) The *[type]* number of *[transport vehicle]* power units to be used;

(V) A certification that the applicant's equipment and operating procedures meet the standards of the Missouri */Department of Economic Development's Division of Transportation/ Division of Motor Carrier and Railroad Safety*, the Federal Department of Transportation (DOT), or the Federal Railroad Administration, or both;

(VI) *[A description of each motor vehicle to be used including make, model, year, identification number, capacity, type (for cargo tanks the specification rating, DOT exemption, for both, and extension papers if applicable), and state and number of the license plate; except that if the applicant's motor vehicles are short-term leased, with different motor vehicles leased for each job, the motor vehicle descriptions may be omitted]* A description of each power unit to include make, model, year, vehicle identification number (VIN), licensed vehicle weight, and state and number of the license plate. Also required is a description of the trailers (cargo box, van, tank) and maximum trailer capacities used by the transporter;

(VII) A disclosure statement for the applicant, principal corporate officers and the holders of more than twenty percent (20%) of the applicant company. If any of these persons were involved in hazardous waste management before their association with the applicant company, the applicant shall submit this information to the department including the names of these persons and the names and locations of the companies with which they were associated; and

(VIII) For applicants who are not residents of Missouri, a written statement designating the director of the department as the authorized agent upon whom legal service may be made for all actions arising in Missouri from any operation of motor vehicles under authority of the department.

B. In addition to the completed application, an applicant shall submit each of the following:

(I) A fee as specified in 10 CSR 25-12.010;

(II) The insurance document(s) as specified in paragraph

(2)(A)4. of this rule; and

(III) Statements, documents, or both, of the following, where applicable:

(a) If the applicant is a partnership, include an affidavit to this effect signed by the proprietor or include a copy of the partnership agreement. If no written partnership agreement has been entered into, include a statement summarizing the agreement between the parties which is signed by each of the partners and certified by a notary public;

(b) If the applicant is a Missouri corporation or a foreign corporation with authority to conduct business in Missouri or is a foreign corporation with facilities or employees in Missouri, a Certificate of Corporate Good Standing from the Missouri secretary of state shall be included. If the applicant is a nonresident corporation without facilities or employees in Missouri, a Certificate of Good Standing from the state or country of residence shall be included; and

(c) If the applicant is conducting its business under an assumed or fictitious name, a certified copy of the registration with the Missouri secretary of state of the assumed or fictitious name shall be included.

C. License renewal.

(I). A hazardous waste transporter wishing to renew his/her license shall submit a license renewal application on a form furnished by the department and shall submit other applicable information, as specified in this section, to the department at least sixty (60) days prior to the expiration date of his/her current license. A Certificate of Corporate Good Standing must be submitted with the renewal. This certificate must have been issued in the twelve (12) months preceding the license expiration date. Insurance requirements must be satisfied as specified in paragraph (2)(A)4. of this rule **except for other than power unit carriers**. The renewal application shall be accompanied by a fee as specified in 10 CSR 25-12.

D. */Motor vehicle additions and substitutions. Changes made to the motor vehicle listing as shown on the transporter's current license application or renewal form shall be reported to the department as follows: A motor vehicle may be added by submitting a written description of the vehicle to be added and paying a fee in accordance with 10 CSR 25-12. The licensing of a motor vehicle which is being added will become effective upon the transporter's receipt of the license certificate. One (1) motor vehicle may be substituted for another by submitting a description of the original motor vehicle and its replacement, returning the license certificate of the vehicle being replaced and paying a substitution fee in accordance with 10 CSR 25-12. A substitution made in this manner will be effective upon the transporter's receipt of the license certificate for the replacement vehicle./ Power unit additions, replacements and temporary permits. Changes made to the power unit listings as shown on the current license application or renewal form shall be reported to the department as follows: A power unit can be added by submitting a written description of the power unit to be added and paying a fee in accordance with 10 CSR 25-12.010. A power unit can be replaced for another without any charge by submitting a description of the original power unit and its replacement. A power unit can be issued a temporary permit for a thirty (30)-day period by submitting a written description of the power unit and paying a fee in accordance with 10 CSR 25-12.010.*

E. Proof of license. A transporter shall carry proof of license with each *[vehicle]* power unit transporting hazardous waste within Missouri. *[Proof of license shall consist of a Hazardous Waste Transporter License Certificate issued to the transporter by the department. Original certificates, not copies, shall be carried with each vehicle. The department will issue a sufficient number of originals for this purpose.] A legible copy of this certificate shall be in the possession of the driver of the *[vehicle]* power unit and shall be shown to representatives of the department, officers of the Missouri State Highway Patrol and other law enforcement officials upon demand;*

4. Insurance.

A. Transporters licensed in accordance with this chapter shall at all times have on file with the department a certification of public liability (bodily injury and property damage) insurance which shall include the required, uniform endorsements covering

each motor vehicle in accordance with 49 CFR part 387 incorporated by reference in this rule. The minimum level of insurance coverage shall not be less than one (1) million dollars combined single limit. (Comment: The federal regulations at 49 CFR 387.9 set forth certain conditions which require five (5) million dollars coverage.)

B. The certificate of insurance shall state that the insurer has issued to the motor carrier a policy of insurance which, by endorsement, provides automobile bodily injury and property damage liability insurance covering the obligations imposed upon the motor carrier by the provisions of the law of Missouri. The certificate shall be duly completed and executed by the insurer on Form E—Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance. The endorsements shall be attached to the insurance policy and shall form a part of that policy. The endorsements shall be made on Form F—Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsements. The certificate shall be duly completed and executed by the insurer. The surety bond shall be in the form set forth in Form G—Uniform Motor Carrier Bodily Injury and Property Damage Surety Bond. The bond shall be duly completed and executed by the surety and principal.

C. An insurer under the provisions of this rule shall submit to the department not fewer than thirty (30) days' notice of cancellation of motor carrier bodily injury and property damage liability insurance by filing with the department the form of notice set forth in Form K—Uniform Notice of Cancellation of Motor Carrier Insurance Policies. The notice shall be duly completed and executed by the insurer. A surety under the provisions of this rule shall give the department not fewer than thirty (30) days' notice of the cancellation of motor carrier bodily injury and property damage liability surety bond by filing with the department the form of notice set forth in Form L—Uniform Notice of Cancellation of Motor Carrier Surety Bond. The notice shall be duly completed and executed by the surety or motor carrier.

D. Forms E, F, G, K and L referred to in subparagraphs (2)(A)4.B. and C. of this rule are the standard forms determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act, 49 U.S.C. section 302(b)(2), 1994.

E. Before any policy of insurance will be accepted by the department, the insurance company issuing the policy or the carrier offering the same, upon request of the department, shall furnish evidence satisfactory to the department that the insurance company issuing the policy is duly authorized to transact business in Missouri and that it is financially able to meet the obligations of the policy offered.

F. All insurance certificates and surety bonds filed with the department shall remain on file with the department and shall not be removed except with the written permission of the director.

G. A new certificate of insurance shall be filed for reinstatement of insurance which has been canceled;

5. Vehicle marking. The transportation vehicle used to ship hazardous waste shall be marked in accordance with 49 CFR 390.21(b) and (c);

6. No hazardous waste shall be accepted for transport unless it has been properly loaded and secured in accordance with 49 CFR 177.834;

7. Incompatible wastes. A waste shall not be added to an unwashed or uncleared container that previously held an incompatible material;

8. In addition to the requirements in 40 CFR 263.10(c)(1), add the following requirements: A transporter who accepts shipments of hazardous waste from a person not required to register as a generator in accordance with 10 CSR 25-5.262, and in so doing accumulates one hundred kilograms (100 kg) or more of hazardous waste, becomes a generator and shall comply with 10 CSR 25-

5.262 in addition to the requirements of this rule. (Note: This provision is not intended to apply to municipal waste haulers who may unknowingly pick up small quantities of hazardous waste that may have been deposited in solid waste containers along their routes.);

9. In addition to the requirements in 40 CFR 263.11, add the following: "In the event that an EPA identification number has not been assigned, the department will assign an EPA identification number." The applicant shall also submit an application for license in accordance with this rule at the time of notification; and

10. In addition to the requirements in 40 CFR 263.12, the following rules apply to transfer facilities. (Note: Used oil transfer facilities are regulated under 10 CSR 25-11.279.):

A. A hazardous waste transported intrastate or into the state by motor carrier shall arrive at its destination in ten (10) calendar days or less from the date the initial transporter signs the manifest, or when the waste first enters the state, unless departmental approval is obtained prior to the expiration of the ten (10)-day period;

B. A hazardous waste destined for out-of-state treatment, storage or disposal shall leave the state in ten (10) calendar days or less from the date the initial transporter signs the manifest unless departmental approval is obtained prior to the expiration of the ten (10)-day period;

C. A hazardous waste transported through the state by motor carrier shall pass through the state in ten (10) calendar days or less unless departmental approval is obtained prior to the expiration of the ten (10)-day period;

D. A secondary containment system for storage of hazardous waste in containers at a transfer facility shall meet the following requirements:

(I) A containment system shall be designed, maintained and operated as follows:

(a) The containment system shall include a base which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills and accumulated precipitation until the collected material is detected and removed. The base shall be under the container;

(b) The base shall be sloped or the containment system shall be designed and operated to drain and remove liquids resulting from leaks, spills or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(c) The containment system shall have a capacity equal to ten percent (10%) of the containerized waste volume or the volume of the largest container, whichever is greater (Containers that do not contain free liquids need not be considered in this calculation.);

(d) Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in part (2)(A)10.D.(I) of this rule to contain any run-on which might enter the system; and

(e) Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area as necessary to prevent overflow of the collection system; and

(II) The containment system shall be inspected as part of the weekly inspections required by 40 CFR 265.174 incorporated by reference in 10 CSR 25-7.265(1);

E. The following requirements apply to the management of ignitable, reactive, incompatible or volatile wastes at a transfer facility: A transporter shall take precautions to prevent accidental ignition or reaction of ignitable or reactive wastes. These hazardous wastes shall be separated and protected from sources of ignition or reaction including, but not limited to, open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical or mechanical), spontaneous ignition (that is, from heat-producing chemical reactions) and radiant heat. While ignitable or reactive waste is being handled, a transporter shall confine smoking and open flame to specially designated locations.

No Smoking signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste;

F. Preparedness and prevention. A transporter shall equip the transfer station as specified in 40 CFR 265.32 incorporated by reference in 10 CSR 25-7.265(1). In addition, a transporter shall also provide safety equipment such as fire blankets, gas masks and self-contained breathing apparatus;

G. Closure. At closure of the storage area, a transporter shall remove and properly dispose of all hazardous waste and hazardous residues. For the purpose of this subparagraph, closure shall occur when the storage of hazardous wastes has not occurred, or is not expected to occur for one (1) year, or when the transporter's license lapses, whichever first occurs;

H. */Recontainerization of hazardous waste at a transfer facility is prohibited; however, hazardous waste containers may be overpacked to contain leaking or to safeguard against potential leaking./* The contents of separate containers of hazardous waste may not be combined at a transfer facility. When containers are overpacked, the transporter shall affix labels to the overpack container, which are identical to the labels on the original shipping container; and

I. A transfer facility shall not be the same facility as designated in item 9 of the manifest.

(D) Operations of Transporters by Modes Other Than *[Motor Vehicle]* Power Unit.

1. A person who transports hazardous waste by a mode other than *[motor vehicle]* power unit shall comply with subparagraphs (2)(A)1. and 2., parts (2)(A)3.A.(V), (2)(A)3.B.(I) and (III), subparagraphs (2)(A)3.C., paragraphs (2)(A)7., 8., 9. and 10. and subsections (2)(B) and (C) of this rule.

2. Application form. An applicant shall submit a completed, department-furnished form which shall contain the following information: name, address, type of transport vehicles to be used in hazardous waste transport and EPA identification number. If an EPA identification number has not been assigned by the EPA, the department will assign an identification number as provided to the department by the EPA.

3. An applicant shall complete and submit a Non-Motor Carrier Certification of Financial Responsibility form provided by the department to satisfy the transporter insurance requirement.

AUTHORITY: sections 260.370, [RSMo Supp. 1997 and] 260.385 and 260.395, RSMo [1994] 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on February 19, 2002 at the Department of Natural Resources Elm Street Conference Center, 1738 E. Elm, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on February 5, 2002. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at P.O. Box 176, Jefferson City, MO, 65102-0176.

To be accepted, written comments must be postmarked by midnight on March 1, 2002. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the rules coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management
Commission
Chapter 12—Hazardous Waste Fees and Taxes

PROPOSED AMENDMENT

10 CSR 25-12.010 Fees and Taxes. The commission is amending (2)(C) and adding subsections (2)(D)–(2)(F).

PURPOSE: Senate Bill 577 was passed by the 2000 General Assembly. Part of the bill requires applicants for a hazardous waste transporter license to pay a fee consisting of an annual application fee, plus an annual use fee based upon tonnage, mileage, or a combination of both. Currently, license applicants pay a fee that is calculated on a flat “per vehicle” basis. This fee is reflected in 10 CSR 25-12.010 as currently written. There were two (2) reasons for changing the method by which the license fee is calculated. First, flat “per vehicle” fees have been successfully challenged in other states because they favor in-state transporters over out-of-state transporters. For example, a vehicle operating exclusively in Missouri throughout the year is assessed the same per vehicle fee as a vehicle only coming to Missouri once or twice a year. The intent of utilizing a use-based fee is to apportion the fee that a hazardous waste transporter pays based upon the actual amount of hazardous waste transported to, from, or through Missouri. Second, the change in calculation of the license fee was intended to increase the total revenues generated by hazardous waste transporter license fees, as authorized by the General Assembly in Senate Bill 577.

Portions of three (3) existing regulations, including 10 CSR 25-12.010, contain language that reflects the current system of licensing transporters on a per vehicle basis. Each of these regulations is proposed for amendment to implement the new system.

(2) Fees and Taxes Applicable to Transporters of Hazardous Waste.

(C) [A transporter who is applying for a hazardous waste transporter license or renewal or who is adding or substituting motor vehicles in accordance with 10 CSR 25-6.263 shall pay a fee, which shall be submitted with the application or with the additional or substitute motor vehicle descriptions.

1. License and license renewal fees shall be based on the number and gross weight of each transport motor vehicle to be used.

A. The following schedule shall be used to compute the fee for motor vehicles:

Number of Vehicles	Gross Weight Less Than 36,000 lbs.	Cost per Vehicle
1st—10th vehicle	\$50	
11th—50th vehicle	\$25	
51st—100th vehicle	\$20	
101st vehicle and more	\$10	

Number of Vehicles	Gross Weight 36,000 lbs. and Over	Cost per Vehicle
1st—10th vehicle	\$100	
11th—50th vehicle	\$50	
51st—100th vehicle	\$40	
101st vehicle and more	\$20	

Example: A transporter is licensing fifteen (15) motor vehicles. Twelve (12) of these have gross weights of less than thirty-six thousand pounds (36,000 lbs.). The fee for those twelve (12) would be $(10 \times \$50) + (2 \times \$25) = \$550$. The other three (3) motor vehicles have gross weights of thirty-six thousand pounds (36,000 lbs.) and over. The fee for those three (3) motor vehicles would be $3 \times \$100 = \300 . The transporter's total fee for the license or renewal therefore would be $\$550 + \$300 = \$850$.

B. The total fee shall not exceed fifteen thousand dollars (\$15,000) per transporter per year.

2. A transporter who wishes to add or substitute motor vehicles at a time other than when applying for a license or renewal shall submit, along with the motor vehicle descriptions, a fee to be computed from the fee schedule listed in subparagraph (2)(C)1.A. of this rule.

A. The fee for motor vehicle additions shall be calculated beginning with the first price category (1st—10th vehicle) for both weight classifications, regardless of the number of motor vehicles already permitted on the transporter license. Example: After being licensed for a fleet of fifty-two (52) motor vehicles, a transporter wishes to add to the license a motor vehicle with a gross weight of twelve thousand pounds (12,000 lbs.). Using the fee schedule in subparagraph (2)(C)1.A., the transporter selects the “GROSS WEIGHT LESS THAN 36,000 LBS.” classification and finds that the fee in the first (top) price category of this weight classification is fifty dollars (\$50).

B. When the transporter is replacing a motor vehicle with a different motor vehicle from the same or lesser weight class, a fee of twenty-five dollars (\$25) is assessed in addition to the information required in 10 CSR 25-6.263.

C. When the transporter is replacing a motor vehicle with a different motor vehicle from a larger weight class, the fee shall be twenty-five dollars (\$25), plus a fifty dollar (\$50) fee to account for the change to the upper fee category in the fee schedule. The written information required in 10 CSR 25-6.263 shall accompany the fee.

3. The license fee for each mode of transport other than motor vehicle shall be one hundred dollars (\$100) per mode per transporter per year. Each transporter license for modes other than motor vehicle will be issued for only one (1) mode of transport (for example, rail transport). A transporter shall not originally include, nor add, vehicles of more than one (1) mode on the same license. For example, a license for rail transport at any time shall not cover motor vehicles.] A hazardous waste transporter as defined at 10 CSR 25-3.260, except those exempted in subsection (E) of this section, requesting a hazardous waste transporter license in accordance with 10 CSR 25-6.263 shall submit to the department along with their license application the following fees:

1. An annual application fee of two hundred dollars (\$200); and

2. A use-based fee, calculated by adding the total licensed vehicle weight (LVW) of power units, and multiplying by the percentage of Missouri International Registration Plan (IRP) mileage (MOIRP) by the percent hazardous waste (HW) times a use rate of .0425. The formula is: $LVW \times \%MOIRP \times \%HW \times .0425 = \text{Use Fee}$. Fee calculations shall be submitted on forms furnished by the department in its application packet. Transporters shall base all calculations on the period of twelve (12) consecutive months immediately prior to July 1 immediately preceding the date of the license application. This time frame is known as the “previous year.”

A. For those power units which utilize the International Registration Plan (IRP) or 12 CSR 20-3.010 for apportioned

registration, the transporter shall use the reported Missouri IRP mileage for the previous year.

B. For those power units not required to track IRP miles, the transporter shall calculate MOIRP mileage by dividing the Missouri mileage of their power units by total mileage for the previous year.

C. The percentage of hazardous waste will be the number of hazardous waste, used oil or infectious waste truckloads from, to or through Missouri, divided by the total truckloads from, to or through Missouri, in the form of a percentage, for the previous year.

D. New transporters who wish to obtain a hazardous waste license and have no "previous year" history of hauling hazardous waste, shall calculate license fees based on estimates of MOIRP mileage and percent hazardous waste.

(I) If an estimate is used to calculate the license fee, the transporter shall, within sixty (60) days of the expiration of the license, report the actual Missouri mileage and percent hazardous waste for the current license year. The renewal fee will include the license fee for the next year, plus any money owed the department due to an underestimation of the current year, plus ten percent (10%).

(II) The department shall not issue refunds but will issue credit for license fees in excess of ten percent (10%) (over-estimation) for the next license year.

E. A transporter who wishes to add another power unit other than when applying for the annual license shall submit, along with power unit descriptions, a fee computed from this formula: LVW of power unit \times MOIRP% \times HW% \times .0425 = Use Fee. Divide this figure by twelve (12), then multiply by the number of months remaining in the license year to derive the fee.

F. To replace one (1) power unit for another (due to accident, sale, or extended maintenance) submit all the required information for the replacement and a license certificate will be issued for that power unit for a limited period.

G. A temporary permit can be issued for thirty (30)-days for a fee of fifty dollars (\$50) for a power unit that is, for example, a temporary lease that is added to the fleet.

3. The total fee shall not exceed twenty-five thousand dollars (\$25,000) per transporter per year.

(D) Record Keeping and Reporting.

1. Licensed transporters, except those exempted in subsection (E) of this section, shall maintain all documentation used in calculating Missouri hazardous waste transporter license fees for a period of three (3) years following the expiration of the license. Transporters who reach the maximum payment are relieved of record keeping requirements and are also free to add or replace power units as necessary during the license year.

2. All documentation used to calculate Missouri hazardous waste transporter license fees must be provided to the department, upon request, within fifteen (15) calendar days from the date of receipt.

(E) Other than power unit transporters are not subject to the requirements of subsections (C) and (D) of this section. The license fee for each mode of transport other than power units shall be three hundred fifty dollars (\$350) per transporter per year. An other than power unit transporter shall not originally include, nor add, more than one (1) mode on the same license. For example, a license for rail transport shall not include power unit hazardous waste transportation.

(F) License renewals submitted within twelve (12) months of the effective date of this rule may be considered a new license and therefore subject to the provisions of 10 CSR 25-12.010 (2)(C)2.D.(I) and (II) applicable to newly licensed transporters. The determining factor will be whether or not the transporter has been keeping accurate records of MOIRP mileage and

Missouri hazardous waste percentage for the previous year. If the transporter has accurate figures for the previous year, then the license will be an actual renewal.

AUTHORITY: sections 260.370, 260.380 **260.390, 260.391, 260.395** and 260.437, 260.479 RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment is estimated to cost affected state agencies and political subdivisions twelve thousand five hundred ninety-six dollars (\$12,596) in fiscal year 2002 and every year thereafter for administration of and compliance with the new rule. A detailed fiscal note has been filed with the secretary of state.

PRIVATE COST: This proposed amendment is expected to cost private entities \$1,073,809 in fiscal year 2002 and every year thereafter for compliance with the requirements of the new rule. A detailed fiscal note has been filed with the secretary of state.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on February 19, 2002 at the Department of Natural Resources Elm Street Conference Center, 1738 E. Elm, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on February 5, 2002. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written comments must be postmarked by midnight on March 1, 2002. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the rules coordinator of the Hazardous Waste Program at (573) 751-3176.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Fees and Taxes

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 25-12.010 Hazardous Waste Fees and Taxes

Affected Agency or Political Subdivision ¹	Number affected	Item	Itemized Cost
Kansas City Regional Household Hazardous Waste Center	1	Est. increase in amount of Hazardous Waste Transporter License Fee	\$649
University of Missouri – Columbia	1	Est. increase in amount of Hazardous Waste Transporter License Fee	\$649
United States Environmental Protection Agency Region VII	1	Est. increase in amount of Hazardous Waste Transporter License Fee	\$649
Missouri Department of Transportation	1	Est. increase in amount of Hazardous Waste Transporter License Fee	\$649
		Total increase in license fee for public entities	\$2,596
		Total annual administrative cost for public entities to document compliance with the rule	\$10,000
		Total estimated annual aggregate compliance cost for public entities:	\$12,596

¹The public entities listed as being affected are those currently possessing a license from the Department of Natural Resources to transport hazardous waste, used oil, or infectious waste.

III. WORKSHEET

- Prior to August 28, 2000 the Missouri Department of Natural Resources was authorized by statute to generate as near as practicable to \$400,000 annually. However, actual revenues have been decreasing and amounted to approximately \$367,000 in the most recent license year.

2. Based on a universe of 345 licensed hazardous waste transporters, this amounts to an average license fee of \$1,065 per transporter.
3. Effective August 28, 2000 the Department is authorized by statute to generate as near as practicable to \$600,000 annually. The proposed amendment to 10 CSR 25-12.010 implements a use-based fee that is intended to generate as near as possible to the target amount.
4. The \$600,000 revenue target is an increase of sixty-one percent (61%) over the current annual revenues of \$367,000.
5. Applying the sixty-one percent increase in total revenues to the current average license fee of \$1,065 per transporter produces an estimate of \$1,714 per transporter under the proposed use-based system.
6. This is an average increase of \$649 paid annually by a hazardous waste transporter to obtain a hazardous waste transporter license.
7. The estimated annual aggregate compliance cost of \$2,596 is calculated by multiplying \$649 x the 4 public entities that are licensed hazardous waste transporters as of November 2001.
8. It is assumed that licensed transporters will incur additional costs to track and document number of loads of hazardous waste, used oil, or infectious waste transported to, from, or through Missouri and also the number of miles that these loads are transported over Missouri roads.
9. Based upon the input of representatives of the hazardous waste transportation industry, it is assumed for purposes of this fiscal note that these activities will require approximately 3 hours per week or 156 hours annually. At an hourly rate of approximately \$16 per hour this amounts to an additional annual administrative cost of approximately \$2500 to perform the record keeping necessary to document compliance with the rule.
10. The total annual aggregate compliance cost for the record keeping requirement is \$2500 x 4 = \$10,000

IV. ASSUMPTIONS

1. Because the actual increase in the license fee paid by an individual transporter will vary based on mileage and load information that is currently not available to the department, it is assumed for the purposes of this fiscal note that the sixty-one percent increase in the revenue generated by the license fee will be distributed equally among all licensed hazardous waste transporters. This does not take into account the fact that some transporters will see more of an increase than others, and some may actually see a decrease, once the use-based fee is implemented. Transporters hauling a greater percentage of hazardous waste over more mileage in Missouri may see more of an increase in their license fee than a transporter doing only a small percentage of their total business transporting hazardous waste.
2. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided. The annualized aggregate cost is expected to remain constant for the duration of the rule.
3. Fiscal year 2000 dollars are used to estimate the costs, and, since inflation cannot be accurately predicted, no adjustments are made for inflation.
4. The universe of affected public entities is based on the information on hand as of November 2001, and we assume that the universe will remain constant.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Fees and Taxes

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 25-12.010 Hazardous Waste Fees and Taxes

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: ¹
341	Licensed hazardous waste transporters	\$1,073,809

¹This is an annualized cost. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided.

III. WORKSHEET

1. Prior to August 28, 2000 the Missouri Department of Natural Resources was authorized by statute to generate as near as practicable to \$400,000 annually. However, actual revenues have been decreasing and amounted to approximately \$367,000 in the most recent license year.
2. Based on a universe of 345 licensed hazardous waste transporters, this amounts to an average license fee of \$1,065 per transporter. Of these 345 transporters, 341 are listed as private entities.
3. Effective August 28, 2000 the Department is authorized by statute to generate as near as practicable to \$600,000 annually. The proposed amendment to 10 CSR 25-12.010 implements a use-based fee that is intended to generate as near as possible to the target amount.
4. The \$600,000 revenue target is an increase of sixty-one percent (61%) over the current annual revenues of \$367,000.
5. Applying the sixty-one percent increase in target revenue to the current average license fee of \$1,065 per transporter produces an estimate of \$1,714 per transporter under the proposed use-based system.
6. This is an average increase of \$649 paid annually by a hazardous waste transporter to obtain a hazardous waste transporter license.
7. The estimated annual compliance cost of \$221,309 attributed to the increased license fee is calculated by multiplying the average increase of \$649 x 341, the number of private entities that are licensed hazardous waste transporters as of November 2001.
11. Based upon the input of representatives of the hazardous waste transportation industry, it is assumed for purposes of this fiscal note that these activities will require approximately 3 hours per week or 156 hours annually. At an hourly rate of approximately \$16 per hour this amounts to an additional annual administrative cost of approximately \$2500 for each licensed transporter to perform the record keeping necessary to document compliance with the rule.

12. The total annual aggregate compliance cost for the record keeping requirement is $\$2500 \times 341 = \$852,500$
13. The total annual aggregate compliance cost for the increased license fee and the record keeping requirement is $\$221,309 + \$852,500 = \$1,073,809$

IV. ASSUMPTIONS

1. Because the actual increase in the license fee paid by an individual transporter will vary based on mileage and load information that is currently not available to the department, it is assumed for the purposes of this fiscal note that the sixty-one percent increase in the revenue generated by the license fee will be distributed equally among all licensed transporters. This does not take into account the fact that some transporters will see more of an increase than others, and some may actually see a decrease, once the use-based fee is implemented. Transporters hauling a greater percentage of hazardous waste over more mileage in Missouri may see more of an increase in their license fee than a transporter doing only a small percentage of their total business transporting hazardous waste.
2. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided. The annualized aggregate cost is expected to remain constant for the duration of the rule.
3. Fiscal year 2000 dollars are used to estimate the costs, and, since inflation cannot be accurately predicted, no adjustments are made for inflation.
4. The universe of affected private entities is based on the information on hand as of November 2001, and we assume that the universe will remain constant.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 1—Organization and Administration

PROPOSED AMENDMENT

11 CSR 45-1.090 Definitions. The commission is amending subsection (11)(B).

PURPOSE: This amendment clarifies that both individuals and business entities can be a key person.

(11) Definitions beginning with K—

(B) Key person—Includes the following **individuals or business entities**:

1. An officer, director, trustee, proprietor, managing agent, or general manager of an applicant or licensee or of a business entity key person of an applicant or licensee;

2. A holder of any direct or indirect legal or beneficial publicly traded interest whose combined direct, indirect or attributed publicly traded interest is five percent (5%) or more in an applicant or licensee or in a business entity key person of an applicant or licensee;

3. A holder of any direct or indirect legal or beneficial privately held interest whose combined direct, indirect or attributed privately held interest is one percent (1%) or more in an applicant or licensee or in a business entity key person of an applicant or licensee;

4. A holder of any direct or indirect legal or beneficial interest in an applicant or licensee or in a business entity key person of an applicant or licensee if the interest was required to be issued under agreement with or authority of a government entity;

5. An owner of an excursion gambling boat; and

6. */Anyone/Any individual or business entity* so designated by the commission or director; and

AUTHORITY: sections 313.004, 313.805 and 313.817, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

PROPOSED AMENDMENT

11 CSR 45-4.400 Occupational Licensure Levels. The commission is amending subsection (2)(I).

PURPOSE: This amendment provides that business entity key persons require an occupational license.

(2) Occupational License Level One (I) includes the following positions or their equivalent:

(I) Individual and Business Entity Key Persons $/$; provider that business entity key persons do not require occupational licenses $/$; and

AUTHORITY: sections 313.004 and 313.805, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency ruled filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

PROPOSED AMENDMENT

11 CSR 45-4.410 Identification Badge Requirements. The commission is amending section (1) and renumbering sections (3) and (4) to (2) and (3).

PURPOSE: This amendment provides that business entity key persons are not required to display a casino identification badge.

(1) Occupational licensees other than business entity key person licensees shall at all times while performing the functions of their positions display a valid, riverboat-issued casino access badge. No casino access badge granting access to any riverboat gaming operation may be held by any person unless that person has been authorized for such access by the Class A applicant or licensee of the riverboat gaming operation for which the badge is to be issued. Each Class A applicant or licensee must notify the commission that such authorization has been granted before any identification badge may be issued to the person. Each Class A applicant or licensee must notify the commission within ten (10) days if any such authorization has been revoked.

(/3/) (2) The casino access badge shall—

(A) Be of a color selected by the riverboat gaming operation for use on all casino access badges utilized by occupational licensees;

(B) Be a three and three-eighths by two and one-eighth-inch (3 3/8" \times 2 1/8") card bearing on the front side the name and logo of the riverboat gaming operation;

(C) Provide a base for a one-inch by one and one-fourth-inch (1" \times 1 1/4") photograph on the front side;

(D) Provide a space for a six (6)-digit number at least one-fourth inch (1/4") in height on the front side;

(E) Display the employee's first name or nickname and job title on the front side;

(F) Provide on the reverse side a line for the employee's full name, Social Security number and date of birth; and

(G) Provide a space for color coded backgrounds for use around the occupational field or title on the front side as follows:

1. Solid white—non-casino occupations: all level II or higher personnel whose job responsibilities do not require access inside the casino turnstiles or to other gaming areas, including but not limited to cages and count rooms;

2. Solid green—surveillance occupations: all personnel whose job responsibilities include the operation, maintenance, and installation of surveillance equipment and the supervision of those surveillance personnel;

3. Solid red—security and guest safety occupations: all personnel whose job responsibilities include the security of the casino facilities, safety of customers and employees, rendering of medical aid and supervision of security personnel;

4. Red diagonal stripes—gaming occupations: all personnel whose job responsibilities are directly related to conducting a gambling game or the repair of a gaming related device, including but not limited to cage department employees, casino operations employees, count department employees, revenue audit employees, slot department employees, and table game department employees;

5. Solid blue—non-gaming occupations: all personnel whose job responsibilities require access inside the casino turnstiles but are not directly related to gaming activities and not handling chips or tokens, including but not limited to environmental services or housekeeping employees; food and beverage employees; maintenance, marine operations or boat operations employees; retail employees, ticketing employees, marketing employees, management information systems or information technology employees, and pit clerk and pit administration employees; and

6. Red horizontal stripes—other non-gaming occupations including but not limited to non-gaming personnel responsible for clerical duties requiring limited access to the gaming pits and other non-gaming areas for the purposes of, for example, player tracking or other marketing duties; the installation, operation, or repair of information systems equipment; pit clerks; pit administrators; table games assistants; marketing; and all information systems personnel and related supervisors.

(4)(3) Casino access badges are not transferable and upon resignation or termination of employment, an identification badge must be returned by the occupational licensee to the holder of a Class A license or to the commission. If returned to the holder of a Class A license, the holder must then return the badge to the commission.

AUTHORITY: sections 313.004, 313.800 and 313.850, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 11—DEPARTMENT OF PUBLIC SAFETY

Division 45—Missouri Gaming Commission

Chapter 4—Licenses

PROPOSED AMENDMENT

11 CSR 45-4.420 Occupational License. The commission is amending section (1).

PURPOSE: This amendment provides that business entity key persons are not required to display a commission license badge.

(1) Occupational licensees **other than business entity key person licensees** shall at all times while performing the functions of their positions display a valid, commission-issued occupational license badge.

AUTHORITY: sections 313.004, 313.800 and 313.850, RSMo [1994] 2000. Original rule filed May 13, 1998, effective Oct. 30, 1998. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 11—DEPARTMENT OF PUBLIC SAFETY

Division 45—Missouri Gaming Commission

Chapter 5—Conduct of Gaming

PROPOSED RULE

11 CSR 45-5.290 Bingo Games

PURPOSE: This rule prohibits casinos from conducting bingo games on excursion gambling boats.

(1) The following words and terms, when used in this rule, shall have the following meanings:

(A) "Bingo games," all games commonly known as bingo as defined in section 313.005(1), RSMo, and including but not limited to promotional bingo games;

(B) "Promotional bingo games," all bingo games offered by a Class A licensee to their patrons in order to directly or indirectly promote the licensee's gambling games, whether or not the

licensee receives consideration from the patrons playing the bingo games.

(2) Notwithstanding any other provision of this chapter to the contrary, no Class A licensee may conduct bingo games on an excursion gambling boat.

(3) No Class A licensee may lease or donate any part of its premises to another person or organization for the purpose of conducting bingo games.

AUTHORITY: sections 313.004 and 313.805, RSMo 2000. Original rule filed Dec. 7, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Gaming Commission Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 6—Operation of the Riverboat

PROPOSED AMENDMENT

11 CSR 45-6.020 Safety Standards. The commission is adding a new subsection (1)(D), amending section (2), subsections (3)(A) and (E) and (4)(A), (B) and (C).

PURPOSE: This amendment allows for approved third party examiners to provide safety inspection services to licensees.

(1) For the purposes of this 11 CSR 45-6.020, the following definitions shall apply:

(B) Permanently moored vessel—a vessel out of navigation that has become substantially a land structure mounted on a floating platform and subject to land based building codes rather than marine inspection laws; *[and]*

(C) Continuously moored vessel—a vessel formerly self-propelled which previously cruised navigable waters but has now been determined by the United States Coast Guard to be continuously docked and removed from navigation*/*; and

(D) Third party examiner—an individual or entity specifically approved by the commission to conduct safety inspections as required by Missouri laws and rules. At a minimum the third party examiner must provide evidence of experience with similar inspection services on similar vessels, financial responsibility in a minimum amount of one (1) million dollars each in general liability insurance, Worker's Compensation and longshoreman's insurance (if required by law), and meet at least the following criteria:

1. Inspectors for superstructure and life safety systems must have at least five (5) years experience in work directly relating to the design and/or fabrication and/or inspection of similar vessels, and knowledge of the fire safety standards of the Missouri laws and rules, as well as the building and fire

codes adopted within the jurisdiction where the structure will be placed into service, or a recognized building and fire code approved by the commission, and be one of the following:

A. An architect licensed in the state of Missouri with at least five (5) years of experience in work directly relating to the design and/or inspection of similarly sized vessels; or

B. A professional engineer licensed in the state of Missouri with at least five (5) years of experience in work directly relating to the design and/or inspection of similarly sized vessels; or

C. An architect or qualified engineer with a regulatory and review agency, such as the American Bureau of Shipping (or affiliate);

2. Marine surveyors for hull inspections must have at least ten (10) years of experience in marine surveying work associated with the inspection of similar vessels and be one of the following criteria:

A. An architect licensed in the state of Missouri; or

B. A professional engineer licensed in the state of Missouri; or

C. A marine surveyor with a regulatory and review agency, such as the American Bureau of Shipping (or affiliate).

(2) Fire Safety Standards. Any establishment to be constructed for dockside gaming that will be permanently moored or continuously moored will be required to meet—1) the fire safety standards of the Missouri laws and rules, and 2) *[the fire safety standards contained in the National Fire Protection Association, NFPA Standard 307, Standard for the Construction and Fire Protection of Marine Terminals, Piers and Wharfs, and 3) the NFPA Life Safety Code]* the building and fire codes adopted within the jurisdiction where the structure will be placed into service, or if there is no locally adopted code then a nationally recognized building and fire code approved by the commission.

(3) Certification of Passenger-Carrying Capacity.

(A) A stability test shall be conducted by the licensee in accordance with 46 CFR, subchapter S, part 170, subpart F. This test shall be witnessed by *[the American Bureau of Shipping, or another regulatory and review agency or private contractor designated]* a third party examiner approved by the commission. In lieu of a stability test, the licensee may elect to perform a Deadweight Survey to determine the Lightweight Displacement and Longitudinal Center of Gravity. The Vertical Center of Gravity shall be determined by a conservative estimate, subject to approval by *[the American Bureau of Shipping or another regulatory and review agency designated]* a third party examiner approved by the commission.

(E) All stability calculations required by subsection (2)(D) shall be furnished by the licensee to *[the American Bureau of Shipping (ABS) or another regulatory and review agency designated]* a third party examiner approved by the commission, for review and approval by that *[agency]* examiner. All vessels must have a letter from the *[designated agency]* approved third party examiner stating compliance with *[this]* these criteria.

(4) Certification of Certain Barges, Floating Platforms and Vessels Other than Excursion Gambling Boats.

(A) All barges, floating platforms and vessels that will be used in conjunction with a riverboat gaming operation shall be certified as suitable for their intended use prior to being placed into service, and annually thereafter. The certification shall be performed by a *[regulatory and review agency]* third party examiner approved by the commission.

(B) Any structure constructed on any barge, floating platform, or vessel that will be normally occupied by persons, and used in

conjunction with a riverboat gaming operation shall conform to the building and fire codes adopted within the jurisdiction where the structure will be placed into service, except those vessels originally designed, and constructed as a vessel subject to inspection by the United States Coast Guard authority, and inspection, and issued a certificate of inspection by the United States Coast Guard and the vessel has not been changed since the issuance of the certificate. **Facilities not required to hold a certificate of inspection issued by the United States Coast Guard and which are located in an area where there is no locally adopted building or fire code shall be in compliance with Missouri laws and rules and a nationally recognized building and fire code approved by the commission.**

(C) Any structure constructed on a barge, floating platform, or vessel that will be normally occupied by persons and used in conjunction with a riverboat gaming operation shall be inspected for compliance with the building, fire codes of the local jurisdiction where the structure will be placed into service by an authority approved by the commission prior to being placed into service and, annually thereafter. **Facilities not required to hold a certificate of inspection issued by the United States Coast Guard and which are located in an area where there is no locally adopted building or fire code shall be in compliance with Missouri laws and rules and a nationally recognized building and fire code approved by the commission.**

AUTHORITY: sections 313.004 and 313.824, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. Please see attached fiscal note.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	11 CSR 45-6.020
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision:	Estimated Cost of Compliance in the Aggregate:
Missouri Gaming Commission	\$6,000

III. WORKSHEET

Professional Services of Marine Safety Expert – 40 hours at \$150.00 per hour = \$6,000

IV. ASSUMPTIONS

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 6—Operation of the Riverboat

PROPOSED AMENDMENT

11 CSR 45-6.025 Safety Inspections. The commission is amending subsections (1)(A) and (B) and section (2), and adding a new section (3).

PURPOSE: This amendment allows for approved third party examiners to provide safety inspection services to licensees and provides specifications for hull inspections.

(1) Each excursion gambling boat shall comply with all applicable federal, state and local law related to safety and with one (1) of the following:

(A) Undergo an inspection prior to licensure and annually thereafter by the United States Coast Guard [*or regulatory and review agency*] resulting in the issuance of a "Certificate of Inspection"; or

(B) Undergo an inspection prior to licensure and annually thereafter by a [*regulatory and review agency*] third party examiner approved by the commission resulting in a finding of safety and suitability for its intended purpose; provided that such excursion gambling boat must also meet the following:

1. If within the jurisdiction of the United States Coast Guard, obtain approval from the United States Coast Guard, or *regulatory and review agency, approval* or its designee for its permanent mooring or continuous mooring system and maintain such approval in good standing; and

2. If previously the holder of a "Certificate of Inspection" issued by the United States Coast Guard or regulatory and review agency, obtain approval by a third party examiner prior to licensure and annually thereafter of a plan for fire fighting and the protection and evacuation of personnel and maintain staff sufficiently trained as required to execute the plan.

(2) Each excursion gambling boat for which the commission has granted continuous docking status, shall comply with the standards for safety, design, construction, inspection, survey, and moorings of permanently moored or continuously moored excursion gambling boats submitted by a [*regulatory and review agency*] third party examiner and approved by the commission; except that this requirement shall not apply to vessels designed and constructed as a motor vessel under the rules and regulations of the United States Coast Guard and which have or have had a "Certificate of Inspection" issued by the United States Coast Guard or regulatory and review agency.

(3) Hull inspections by third party examiners approved by the commission shall comply with the standards set forth in 11 CSR 45-6.020 and shall meet the following requirements:

(A) An annual survey shall be conducted of permanently moored vessels by a third party examiner as defined in 11 CSR 45-6.020 to determine if structural changes exist which may affect the stability of the vessel. The survey shall consist of the following:

1. General inspection of the superstructure and layout of outfitting to ensure there are no changes to the approved arrangement that may affect the stability of the vessel;

2. Inspection of the underdock spaces to ensure watertight integrity of the vessel is maintained;

3. Inspection and report on the condition of the hull and watertight bulkheads;

4. Inspection and report on the condition of watertight doors and watertight bulkhead penetration;

5. Inspection and report on the condition of ventilator, hatch covers, and manhole covers. This annual survey does not apply to United States Coast Guard certified vessels that are subject to United States Coast Guard regulatory inspections;

6. Permanently moored vessels shall undergo dry-dock and internal structural examinations at intervals in accordance with 46 CFR 71.50-3 or present evidence of compliance with alternative methods of hull examination as may be deemed acceptable at the time, by the United States Coast Guard, for vessels that operate in fresh water;

7. Inspection of permanently moored vessels having steel or aluminum hulls may be performed in dry-dock or in-the-water. In-the-water inspections shall consist of an internal structural examination and a detailed nondestructive examination of the vessel's hull. The nondestructive hull examination may be performed by underwater inspection methods or from inside the vessel if all compartments are safely accessible. "Safely accessible" shall be dependent upon the issuance of a "gas free certificate" by a certified marine chemist or an individual otherwise qualified to issue such certificate;

8. All hull structural and in-the-water examinations and inspections of permanently moored vessels shall be under the direction of a third party examiner approved by the commission as provided in 11 CSR 45-6.020. Expertise of the approved third party examiner shall include knowledge of nondestructive testing methods and procedures for the materials being tested and the nature of testing being accomplished;

9. The inspection techniques must be under the general direction of an American Society for Nondestructive Testing (ASNT) Level III nondestructive certified technician. Inspections and measurements must be performed by an ASNT Level II (or higher) nondestructive certified technician;

10. The inspection results must be maintained in a format approved by the commission that will allow for examination by the commission's representatives, including comparison of results from the previous inspections;

11. Repairs using underwater welding shall be subject to periodic reevaluation at subsequent inspections. Such repairs shall be completed in accordance with the standards found in the American Welding Society's "Specifications for Underwater Welding";

12. The commission may require immediate dry-docking of the vessel if structural examinations and underwater inspections or repair work are not conducted in accordance with these rules; and

13. All work shall be governed by and construed according to Missouri law effective on the execution date.

(B) Written documentation of compliance with the requirements of subsection (A) of this section shall be furnished to the commission by the licensee. A third party examiner approved by the commission shall certify such documentation.

AUTHORITY: sections 313.004 and 313.805, RSMo [1994] 2000. Emergency rule filed June 25, 1996, effective July 5, 1996, expired Dec. 31, 1996. Original rule filed June 25, 1996, effective Feb. 28, 1997. Amended: Filed Feb. 19, 1998, effective Aug. 30, 1998. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. Please see attached fiscal note.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002 in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	11 CSR 45-6.025
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision:	Estimated Cost of Compliance in the Aggregate:
Missouri Gaming Commission	\$6,000

III. WORKSHEET

Professional Services of Marine Safety Expert - 40 hours at \$150.00 per hour = \$6,000

IV. ASSUMPTIONS

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 8—Accounting Records and Procedures;
Audits

PROPOSED AMENDMENT

11 CSR 45-8.050 Standard Financial and Statistical Reports.
The commission is amending sections (1), (2), (3) and (6).

PURPOSE: This amendment provides for a quarterly financial report in order to improve, consolidate and simplify financial reporting requirements.

(1) Each licensee shall file monthly, **quarterly** and annual reports of financial and statistical data with the commission using electronic transmission and software formats as prescribed.

(2) The commission shall periodically prescribe and send licensees a set of standard reporting forms and instructions to be used in filing monthly, **quarterly** and annual reports. All *[monthly and annual]* reports required under this rule shall be prepared in accordance with generally accepted accounting principles.

(3) Annual reports shall be based on the licensee's fiscal year. **Quarterly reports shall be based on the licensee's fiscal quarter.** Monthly reports shall be based on calendar months. *[Monthly reports shall contain a cumulative year-to-date column so as to facilitate analysis.]*

(6) Letters shall be addressed to the commission and postmarked or faxed no later than the required filing date and reports shall be transmitted no later than the required filing date. The required filing dates are as follows:

(B) Quarterly reports shall be due twenty (20) calendar days following the end of the licensee's fiscal quarter;

[(B)](C) Annual reports shall be due ninety (90) calendar days following the end of the licensee's fiscal year or ten (10) days after Form 10-K is filed with the Securities and Exchange Commission, whichever come first;

[(C)](D) The licensee shall submit supporting schedules and documentation for the *[monthly and annual]* reports as prescribed by the commission; and

[(D)](E) Any adjustments to the *[monthly and annual]* reports resulting from review and/or audit by the commission shall be made by the licensee within five (5) business days after written notification.

AUTHORITY: sections 313.004, 313.805 and 313.825, RSMO 1994/2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing

is scheduled for 10:00 a.m., February 20, 2002 in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 12—Liquor Control

PROPOSED AMENDMENT

11 CSR 45-12.090 Rules of Liquor Control. The commission is amending subsection (5)(B).

PURPOSE: This amendment permits a licensee's food and beverage director to consume alcoholic beverages in nongaming areas and prohibits beverage servers from taste-testing alcoholic beverages on an excursion gambling boat or adjacent facility.

(5) Employees.

(B) An excursion liquor licensee may submit to the director a written request for authorization for level I licensees or applicants, the licensee's food and beverage director or *[other]* corporate officers to consume alcoholic beverages in the nongaming areas of the premises for business purposes. The director's authorization or denial shall be in writing. Beverage servers are prohibited from taste-testing alcoholic beverages on an excursion gambling boat or facility immediately adjacent to an excursion gambling boat; however, the licensee may train beverage servers at an off-site location by using taste-testing in order to inform the beverage server about the characteristics of beverages offered by the licensee.

AUTHORITY: sections 313.004, 313.805 and 313.840, RSMO 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 13—Hearings

PROPOSED AMENDMENT

11 CSR 45-13.070 Transmittal of Record and Recommendation to the Commission. The commission is adding a new subsection (4)(B) and relettering the remaining subsection.

PURPOSE: This amendment provides that the commission may assess hearing costs, not to exceed fifty dollars (\$50), against parties that fail to appear at hearings.

(4) Final Commission Order.

(B) As part of the final Commission Order, the commission may assess hearing costs, not to exceed fifty dollars (\$50), against any party who without good cause fails to appear at a hearing conducted pursuant to this chapter.

[(B)] (C) Copies of the final Commission Order shall be served on a petitioner by certified or overnight express mail, postage prepaid, or by personal delivery.

AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Emergency amendment filed Dec. 12, 1997, effective Dec. 22, 1997, expired June 19, 1998. Amended: Filed Dec. 12, 1997, effective July 30, 1998. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED AMENDMENT

15 CSR 30-50.010 Definitions. The commissioner of securities is proposing to amend the purpose and section (1).

PURPOSE: This amendment defines additional terms and revises the definitions of some terms used in the administration of the Act and in the corresponding rules, forms and orders made.

PURPOSE: *[The commissioner of securities, under the direction of the secretary of state, administers the Missouri Uniform Securities Act. The commissioner may make rules, forms and orders as are necessary to carry out the provisions of the Act and may define terms, whether or not used in the Act, as far as the definitions are not inconsistent with the Act.]* This rule defines certain terms used in the administration of the Missouri Uniform Securities Act and in the corresponding rules, forms and orders made.

(1) When the terms listed in this rule are used in the Missouri Uniform Securities Act (the Act), these rules, the forms and the orders of the commissioner, the following meanings shall apply (unless the context otherwise requires), together with those which may later appear to the extent that they are not inconsistent with definitions provided in Chapter 409, RSMo:

(G) CRD System means the NASAA/NASD Central Registration Depository;

[(G)] **(H) Control and controlling person mean possession of the power, authority or means to engage in the management or policy-making functions of a person, directly or indirectly, through ownership of securities, by contract or otherwise. An officer, director, partner or trustee or individual occupying similar status or performing similar functions or a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of another shall be presumed a controlling person;**

[(H)] **(I) Division or Securities Division means the staff of the Division of Securities, Office of Secretary of State of Missouri, or the Office of the Commissioner of Securities of Missouri;**

(J) IARD System means the NASAA/SEC Investment Adviser Registration Depository;

[(I)] **(K) Investment company, for the purpose of section 409.305(j) of the Act, means an issuer defined in Section 3, Investment Company Act of 1940;**

[(J)] **(L) Isolated, for the purpose of section 409.401 409.402(b)(1) of the Act, means standing alone, disconnected from any other transactions *[(Gales v. Weldon, 282 SW2d 522, 526 (Mo. 1955))]*;**

[(K)] **(M) NASD means the National Association of Securities Dealers, Inc.;**

[(L)] **For offer or offer to sell, see Kreis v. Mates Investment Fund, Inc., 473 F2d 1308 (1973) (see also sale or sell subsection (1)(Q));**

(N) NASAA means the National Association of Securities Administrators Association, Inc.;

[(M)] **(O) Parent means an affiliate controlling another person;**

[(N)] **(P) Predecessor means a person, a major portion of whose business, assets or control has been acquired by another;**

[(O)] **(Q) Promoter means a person who—**

1. Acting alone or in conjunction with one (1) or more other persons, directly or indirectly, takes the initiative in founding and organizing or reorganizing the business or enterprise of an issuer; and

2. In connection with the founding and organizing or reorganizing of the business or enterprise of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, a substantial amount of any class of securities of the issuer or a substantial amount of the proceeds from the sale of any class of securities;

[(P)] **(R) Registrant means an applicant for whom, or an issuer with respect to whose securities, a registration has become effective;**

[(Q)] **(S) Sale or sell—**

1. For the purpose of section 409.401(j)(6)(C) 409.401(m)(6)(C) of the Act, the phrase "any act incident to a class vote by stockholders" shall include the issuance of securities by a corporation and the distribution of securities to its security holders or to another corporation or to the security holders of such other corporation, by the issuing corporation or by such other corporation in connection with any merger, consolidation, reclassification of securities or sale of corporate assets referred to in section 409.401(j)(6)(C) 409.401(m)(6)(C); and

2. For the purpose of section 409.401(j)(6)(D) 409.401(m)(6)(D) of the Act, the phrase "any act incident to a judicially approved reorganization," shall include the issuance of securities of the types defined in Section 3./.(a)(7) (receivers' and trustees' certificates) and in Section 3./.(a)(10) (securities issued in reorganizations) of the Securities Act of 1933; *[and]*

[(3). See also offer and offer to sell subsection (1)(L);]

[(R)] **(T) SEC means the United States Securities and Exchange Commission;**

[(S)] **(U) Subsidiary means an affiliate controlled by another person;**

I(T)] (V) Underwriter means a person who has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a participation in the direct or indirect underwriting of any such undertaking. Not included is a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission; and

I(U)] (W) For the purpose of section 409.402(a)(6) of the Act, the words industrial loan association, or similar association organized and supervised under the laws of this state do not include in their meaning any loan and investment company formed under the provisions of Chapter 368, RSMo.

AUTHORITY: sections 409.406(a) and 409.413(a), RSMo [1994] 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSON

15 CSR 30-50.020 General Instructions. This rule prescribed and clarified general matters within the commissioner's jurisdiction.

PURPOSE: The commissioner of securities is proposing to rescind this rule and readopt a new rule that revises and prescribes more concisely general matters within the commissioner's jurisdiction.

AUTHORITY: sections 409.406(a) and 409.407(a), RSMo Supp. 1995 and 409.414, RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 50—General

PROPOSED RULE

15 CSR 30-50.020 General Instructions

PURPOSE: This rule prescribes general matters within the commissioner's jurisdiction.

(1) **Office Hours.** The Securities Division shall be open for transaction of business between the hours of 7:30 a.m. and 5:00 p.m. on Monday through Friday, public holidays excepted.

(2) **Filing Documents with the Securities Division.**

(A) A document is filed when it is received in the office of the commissioner, or filed through the Central Registration Depository (CRD) System, the Investment Advisor Registration Depository (IARD) System, or other electronic system approved by the commissioner. All applications for registration and filings shall be dated and bear a signature.

(B) All written communications, including applications and inquiries not submitted through the CRD System or the IARD System, shall be delivered by mail, carrier, or facsimile to: Secretary of State, Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, MO 65102 (section 409.414(a), RSMo).

(C) Only the original executed copy of each form is required. If a document pertains to more than one (1) subject or application, a separate form, including cover or transmittal letter, or two (2) or more copies of the letter commensurate with the number of items submitted, should be filed.

(D) All forms and documents shall be printed, photocopied, typewritten, in electronic format, or prepared by a similar process which, in the opinion of the commissioner, produces copies suitable for a permanent record. All forms and documents shall be clear, easily readable and suitable for repeated photocopying. Exhibits may be attached and shall be properly marked and identified.

(E) All applications and other documents received and filed in the division become a part of its permanent records (section 409.414(a), RSMo) and may not be returned to the applicant or correspondent.

(3) **Practice of Law.** The unauthorized practice of law or the appearance of unauthorized practice shall be avoided in connection with any filing under the Act.

(4) **Delegation of Authority.** The commissioner may delegate to the staff of the Securities Division the authority to act for the commissioner, or to perform necessary functions and duties to carry out the purposes of the Act, rules promulgated thereunder and the orders and policies of the commissioner (section 1.060, RSMo).

(5) **Interpretive Opinions.** Interpretive opinions (section 409.414(e), RSMo) including no action letters are rendered only in writing. Informal discussions with the commissioner or members of the staff of the Securities Division shall not be taken to signify any determination or approval concerning the matters discussed.

(6) **Exceptions.** When authorized by statute, the commissioner may authorize or make exceptions to these rules as are necessary to carry out the provisions of the Act. Nothing in these rules shall inhibit the exercise by the commissioner of authority prescribed in or under the Act.

(7) **Open Records Policy.** The commissioner shall issue an open records policy in compliance with Chapter 610, RSMo.

(8) Commissioner's Seal. The Seal of the Office of Secretary of State shall constitute the seal of the commissioner and of his/her office (section 409.414(d) and (f), RSMo).

AUTHORITY: sections 409.406(a), 409.407(a), and 409.414, RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Rescinded and readopted: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSON

15 CSR 30-50.030 Fees. This rule prescribed policies and procedures for charging registration and other fees.

PURPOSE: The commissioner of securities is proposing to rescind this rule and readopt a new rule that revises and prescribes more concisely the policies and procedures for charging registration and other fees.

AUTHORITY: sections 409.202(b) RSMo Supp. 1995, 409.305(b) and (j), 409.413 and 409.414(d) and (e), RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RULE

15 CSR 30-50.030 Fees

PURPOSE: This rule prescribes policies and procedures for charging registration and other fees.

(1) General Provisions.

(A) All fees shall accompany the application or other filing to which they pertain.

(B) Fees shall be remitted by check, draft or money order (cash is not acceptable) payable to the Director of Revenue, State of Missouri, or if the application is submitted through the Central Registration Depository (CRD) System or Investment Adviser Registration Depository (IARD) System, fees shall be remitted by check or wire transfer to the financial institution designated by the National Association of Securities Dealers (NASD).

(C) Fees paid with applications filed through the CRD System, the IARD System, or other electronic system approved by the commissioner may be sent by wire transfer or mail to NASD Regulation, Inc.

(2) Registration of Securities (section 409.305(b) and (j), RSMo). The fees for registration of securities are as follows:

(A) The minimum filing fee is one hundred dollars (\$100). This permits registration of up to one hundred thousand dollars (\$100,000) of securities in Missouri.

(B) To register more than one hundred thousand dollars (\$100,000) of securities in Missouri, the registration fee is one-twentieth of one percent (1/20 of 1%) of the amount above one hundred thousand dollars (\$100,000). The maximum total fee (filing plus registration) is one thousand dollars (\$1,000).

(C) The registration fee in the case of warrants or rights shall be based on the aggregate amount of the security called for by the warrants or rights, and the amount of the warrants or rights if they are not distributed without consideration.

(D) The registration fee relating to convertible securities in which no consideration is given for the second security, except the surrender of the first, shall be based solely on the amount of the convertible security.

(E) When separate securities are sold as a unit, the unit and the securities that comprise the unit are considered one (1) registration. The registration fee is based on the aggregate amount of securities that comprise the unit. When separate securities are sold separately, a separate application, filing fee and registration fee is required for each security.

(F) Renewal Filings. The annual renewal fee for the registration of securities is one hundred dollars (\$100).

(3) Federal Covered Securities. The filing fees for federal covered securities are as follows:

(A) Face-amount certificate companies or open-end management companies. The fees for securities issued by these companies, as classified under the Investment Company Act of 1940 and that are offered or sold in this state, shall consist of the following:

1. Initial filing fee. The initial filing fee is one hundred dollars (\$100). The initial filing fee must be paid prior to the initial offer of the securities in this state. A separate initial filing fee is required for each portfolio of securities.

2. Filing fee. A filing fee of one-twentieth of one percent (1/20 of 1%) of the amount of securities sold in this state during the issuer's previous fiscal year must be paid within sixty (60) days of the issuer's fiscal year end. The maximum filing fee for the securities sold in this state is three thousand dollars (\$3,000) and the minimum filing fee is one hundred dollars (\$100). A separate filing fee is required for each portfolio of securities.

(B) Closed End Management Companies. The fees for securities issued by these companies, as classified under the Investment Company Act of 1940 and that are offered or sold in this state, shall consist of the following:

1. Initial filing fee. The initial filing fee is one hundred dollars (\$100). The initial filing fee of one hundred dollars (\$100)

includes the filing fee for the first one hundred thousand dollars (\$100,000) of securities to be sold in this state.

2. Filing fee. The filing fee to sell an additional amount of securities above the first one hundred thousand dollars (\$100,000) is one-twentieth of one percent (1/20 of 1%) of the amount of the additional securities to be sold in this state. The maximum filing fee is one thousand dollars (\$1,000) and includes the initial filing fee.

(C) Unit Investment Trusts. The fees for securities issued by unit investment trusts, as classified under the Investment Company Act of 1940 and that are offered or sold in this state, shall consist of the following:

1. Initial filing fee. The initial filing fee is one hundred dollars (\$100). The initial filing fee must be paid prior to the initial offer of the securities in this state. The initial filing fee of one hundred dollars (\$100) includes the fee for the first one hundred thousand dollars (\$100,000) of securities sold in this state.

2. Filing fee. After the initial offering is complete, the issuer must pay a filing fee of one-twentieth of one percent (1/20 of 1%) of the amount of securities sold in this state above the first one hundred thousand dollars (\$100,000). The maximum filing fee is one thousand dollars (\$1,000) and includes the initial filing fee.

(D) Regulation D, Rule 506. The filing fee for each offering under Regulation D, Rule 506, is one hundred dollars (\$100).

(4) Registration of Broker-Dealers and Investment Advisers (section 409.202(b), RSMo). The filing fees for registration of broker-dealers and investment advisers are as follows:

- (A) Initial Registration—two hundred dollars (\$200); and
- (B) Renewal Registration—one hundred dollars (\$100).

(5) Registration of Agents and Investment Adviser Representatives. The filing fees for registration of broker-dealer agents and investment adviser representatives are as follows:

- (A) Initial Registration—fifty dollars (\$50); and
- (B) Renewal Registration—fifty dollars (\$50).

(6) Federal Covered Adviser. The notice filing fees of federal covered advisers are as follows:

- (A) Initial Notice Filing—two hundred dollars (\$200); and
- (B) Renewal Notice Filing—one hundred dollars (\$100).

(7) Document Requests. The fees for copies of documents and records in the division, or reports relating to these documents or records, are as follows: ten cents (\$.10) per page, plus five dollars (\$5) for certification and two dollars (\$2) per page for telephone and electronic transmittals (sections 28.160 and 409.414(d), RSMo).

(8) Interpretive Opinions. Interpretive opinions, including no action letters and opinions that involve a claim of exception from a definition under section 409.401 of the Act or otherwise from the scope of the Act, may be provided to interested persons for a filing fee of one hundred dollars (\$100) (section 409.414(e), RSMo).

(9) Notice Filing for Exemptions. The filing fee for notice filings for exemption under section 409.402 of the Act is one hundred dollars (\$100).

(10) Refunds.

(A) No refund of filing fees shall be permitted in the instances of applications for registration of securities and for registration of broker-dealers, agents, investment advisers and representatives of investment advisers, even though the applications are denied or withdrawn (sections 409.202(b) and 409.305(b), RSMo);

(B) Registration fees, but not filing fees, will be refunded upon withdrawal of an application. Registration fees will not be refunded if an application is denied registration pursuant to section 409.305 of the Act; and

(C) No refund of registration fees shall be permitted, if registration of securities is effected.

*AUTHORITY: sections 409.202(b), 409.305(b) and (j), 409.413 and 409.414(d) and (e), RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Rescinded and readopted: Filed Dec. 17, 2001.*

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 50—General

PROPOSED RESCISSON

15 CSR 30-50.040 Forms. This rule prescribed the forms adopted and approved for filing with the commissioner.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that replaces outdated forms with uniform federal and NASAA-adopted forms.

*AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Rescinded: Filed Dec. 17, 2001.*

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 50—General

PROPOSED RULE

15 CSR 30-50.040 Forms

PURPOSE: This rule prescribes the forms adopted and approved for filing with the commissioner.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) The following forms have been adopted and approved for filing with the division:

(A) Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives—

1. Form BD—Uniform Application for Broker-Dealer Registration approved July 1999, OMB Approval Number 3235-0012, or any form which substantially comports with the specified form;

2. Form BDW—Uniform Request for Broker-Dealer Withdrawal approved August 1999, OMB Approval Number 3235-0018, or any form which substantially comports with the specified form;

3. Form SBD-1—Missouri Broker-Dealer Affidavit revised October 2001, or any form which substantially comports with the specified form;

4. Form X-17A-5—Financial and Operational Combined Uniform Single Report approved October 1999, OMB Approval Number 3235-0123, or any form which substantially comports with the specified form;

5. Form U-4—Uniform Application for Securities Industry Registration or Transfer adopted by the North American Securities Administration Association (NASAA) on April 29, 2001, or any form which substantially comports with the specified form;

6. Form U-5—Uniform Termination Notice for Securities Industry Registration adopted by the NASAA on April 29, 2001, or any form which substantially comports with the specified form;

7. Form SA-1—Missouri Application for Renewal Registration as Agent revised October 2001, or any form which substantially comports with the specified form;

8. Form ADV—Uniform Application for Investment Adviser Registration approved January 1999, OMB Approval Number 3235-0049, or any form which substantially comports with the specified form;

9. Form ADV-W—Uniform Notice of Withdrawal from Registration as Investment Adviser approved January 1999, OMB Approval Number 3235-0313, or any form which substantially comports with the specified form;

10. Form SADV-1—State Covered Investment Adviser Affidavit revised October 2001, or any form which substantially comports with the specified form;

11. Form SADV-SH—State Application for Hardship Exemption from IARD revised October 2001, or any form which substantially comports with the specified form;

12. Form U-2—Uniform Consent to Service of Process adopted by NASAA and revised November 1997, or any form which substantially comports with the specified form.

(B) Registration of Securities—

1. Form U-1—Uniform Application to Register Securities adopted by NASAA and revised February 1997, or any form which substantially comports with the specified form;

2. Form SR-1—Missouri Application to Register Securities by Notification revised December 2001;

3. Form U-2—Uniform Consent to Service of Process adopted by NASAA and revised November 1997, or any form which substantially comports with the specified form;

4. Form U-2A—Uniform Form of Corporate Resolution adopted by NASAA and revised April 1998, or any form which substantially comports with the specified form;

5. Form SR-2—Missouri Annual Report for Renewal of Registration of Securities revised December 2001;

6. Form SR-3—Midwest Regional Review Application revised December 2001, or any form which substantially comports with the specified form;

7. Form U-7—Small Company Offering Registration (SCOR) Form adopted by NASAA and revised September 1999, or any form which substantially comports with the specified form.

(C) Exemptions from Registration, Exceptions from Definition, Federal Covered Securities—

1. Form SE-1—Missouri Statement of Claim for the Exemption of Securities of an Agricultural Cooperative Association revised December 2001;

2. Form SE-2—Missouri Application for Exception from Definition as Agent for Sellers of Agricultural Cooperative Securities revised December 2001;

3. Form NF—Uniform Investment Company Notice Filing adopted by NASAA April 1997, or any form which substantially comports with the specified form; and

4. Form D—Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption approved in June 1999, OMB Approval Number 3235-0076, or any form which substantially comports with the specified form.

(2) The division on request will supply the forms listed in this rule in printed format. Accurate reproduction of the forms may be utilized for filing in lieu of the printed forms. All uniform forms are electronically available.

AUTHORITY: section 409.413(a), RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Rescinded and readopted: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSON

15 CSR 30-50.120 Application for Renewal Registration as Agent. This form was adopted and approved for filing as an application for renewal registration as agent.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history,

please consult the Code of State Regulations. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.130 Registration of Securities by Notification. This form was adopted and approved for applying for the registration of securities by notification.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history, please consult the **Code of State Regulations**. Rescinded: Filed Dec. 13, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.150 Application for Registration of Securities by Qualification. This form was adopted and approved for applying for the registration of securities by qualification.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history,

please consult the Code of State Regulations. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.160 Investment Company Report of Sales. This form was adopted and approved for applying for the registration of additional securities.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history, please consult the **Code of State Regulations**. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.170 In the Matter of the Condition of. This form was adopted and approved for filing by the registrant of securities. The form was designed as a report of financial condition.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history,

please consult the Code of State Regulations. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.180 Individual Affidavit. This form was adopted and approved for filing by applicants for the registration of securities by qualification and for the registration as broker-dealer or as investment adviser.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.210 Statement of Claim for the Exemption of Securities of a Cooperative Association. This rule set out the form by which cooperative associations made disclosure justifying that their securities could be exempted from registration.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413, RSMo 1986. Emergency rule filed Aug. 11, 1978, effective Aug. 23, 1978, expired Dec. 21, 1978.

*Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.*

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.220 Application for Exception from Definition of Agent for Sellers of Agricultural Cooperative Securities. This rule set out the form by which salesmen of cooperative association securities were to be exempted from the definition of agent.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413, RSMo 1986. Emergency rule filed Aug. 11, 1978, effective Aug. 23, 1978, expired Dec. 21, 1978. Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

PROPOSED AMENDMENT

15 CSR 30-51.010 General Instructions. The commissioner of securities is amending the Purpose and section (1), deleting sections (2), (3) and (4) and renumbering and amending the remaining sections.

PURPOSE: This amendment rescinds some instructions and clarifies other instructions.

PURPOSE: This rule covers general instructions applicable to persons applying for registration as broker-dealer, agent, [or] investment adviser, or investment adviser representative.

(1) **Qualifications for Registration.** A broker-dealer, agent, investment adviser, [or representative of an] investment adviser representative, or issuer agent may be registered or renewed [as such] under the Act if the commissioner finds that the applicant:

- (A) [is] Is qualified[.];
- (B) [h]Has sufficient training, knowledge and experience in the securities business[.];
- (C) [is] Is of good repute and has otherwise satisfied the requirements of the Act and these rules[.]. In determining which activities require registration under the Act, see section 409.401(c) with respect to the broker-dealer, section 409.401(b) with respect to the agent, sections 409.201(c), 409.401(f) and 409.415(f) with respect to the investment adviser and 409.401(g) with respect to the representative of an investment adviser[.]; and
- (D) Has attained the age of eighteen (18) years, if the applicant is an individual.

[(2) The applicant, if an individual, shall have attained the age of eighteen (18) years.

(3) A foreign corporation shall furnish a copy of the certificate of authority to transact business in Missouri, or an opinion of counsel stating no such authority is required (section 351.570, RSMo).

(4) Any applicant who will engage in or transact business in Missouri under a name other than its true name shall furnish evidence of registration of fictitious name (section 417.200, RSMo).]

[(5)] (2) **Registered Person Requirement.** A broker-dealer shall have [and maintain] at least one (1) agent registered in this state. An investment adviser shall have at least one (1) investment adviser representative registered in this state.

[(6)](3) **Dual Registration of Agents and/or Investment Adviser Representatives.** Any applicant for registration as agent or investment adviser representative shall not be registered as representing more than one (1) broker-dealer [or], issuer or investment adviser at any one (1) time, except as follows:

- (A) Where control and management of the broker-dealers [or], issuers or investment advisers are essentially identical; or
- (B) Where [there is not conflict of interest, and where] both broker-dealer(s), [and/or] issuer(s) and/or investment adviser(s) have filed [a, prior to the dual registration, written statements] a statement signed by a principal of each firm:
 1. Acknowledging the proposed dual agency[and];
 2. Affirming that there will be no conflict. These statements must display an original signature of the appropriate signatory of the principal[.] of interest; and
 3. Assuring the commissioner that the dual agency will be disclosed to all prospective customers.

[(7)] (4) **Broker-Dealer with Investment Adviser or Federal Covered Adviser Capacity.** No broker-dealer shall function as an investment adviser or federal covered adviser [(sections 409.201(c)(2) and 409.401(f)(3))] unless [it has been registered as a broker-dealer with investment advisory capacity under] the broker-dealer has also registered as an investment adviser, filed as a federal covered adviser, or included in its application a written statement as required in 15 CSR 30-51.020(1)(C) (section 409.204(b)(6)).

AUTHORITY: sections 409.202 and 409.413(a), RSMo [1994] 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 51—Broker-Dealers, Agents, Investment Advisers and Representatives of Investment Advisers

PROPOSED RESCISSON

15 CSR 30-51.020 Application for Registration. This rule prescribed the information to be contained in, and the documents to accompany, applications for registration as broker-dealer, agent or investment adviser.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that more clearly prescribes the information to be contained in, and the documents to accompany, applications for registration as broker-dealer, broker-dealer agent, issuer agent, investment adviser, and investment adviser representative, and the notice filing requirement for federal covered investment advisers.

AUTHORITY: sections 409.202, RSMo Supp. 1995 and 409.413(a), RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

PROPOSED RULE

15 CSR 30-51.020 Applications for Registration or Notice Filings

PURPOSE: This rule prescribes the information to be contained in, and the documents to accompany applications for registration as broker-dealer, broker-dealer agent, issuer agent, investment adviser, and investment adviser representative, and the notice filing requirement for federal covered investment advisers.

(1) **Broker-Dealer Application.** The application for registration as broker-dealer shall contain the information outlined in section 409.202(a) of the Act and in this rule. National Association of Securities Dealers (NASD) members must file applications in accordance with the guidelines of the Central Registration Depository (CRD) System.

(A) **Initial Registration.** The following shall be included in an initial application for registration:

1. Form BD;
2. Form SBD-1, the Broker-Dealer Affidavit;
3. If an NASD member, the most recent audited financial statements or Form X-17A-5 FOCUS Report;
4. If not an NASD member, the most recent certified financial statements;
5. Designation of at least one (1) broker-dealer agent to be registered in Missouri; and
6. Payment of the filing fee.

(B) **Renewal Registration.** The following shall be submitted in a renewal application:

1. If an NASD member, broker-dealer must submit payment of the filing fee.
2. If not an NASD member, broker-dealer must submit:
 - A. The execution page of the Form BD;
 - B. Any amendments to the Form BD not previously filed;
 - C. A balance sheet prepared within ninety (90) days of filing;
 - D. A listing of agents representing the broker-dealer; and
 - E. Payment of the filing fee.

(C) **Broker-Dealers Acting as Investment Adviser or Federal Covered Adviser.** Broker-dealers who will function as investment advisers or federal covered investment advisers shall file with its initial registration application and in addition to the above requirements, the Form ADV and a listing of all investment adviser representatives who will be rendering investment advice for the firm in this state. Broker-dealers have a continuing duty to amend this information under 15 CSR 30-51.160.

(2) **Broker-Dealer Agent and Issuer Agent Application.** The application for registration as a broker-dealer agent or issuer agent shall contain the information outlined in section 409.202(a) of the Act and in this rule. NASD members must file applications in accordance with the guidelines of the CRD System.

(A) **Initial Registration.** The following shall be included in an initial application for registration:

1. Form U-4;
2. Payment of the filing fee; and
3. Documentation of qualification under examination requirements.

(B) **Renewal registration of broker-dealer agents and issuer agents.** The following shall be submitted in a renewal registration:

1. Payment of the filing fee; and
2. If not an agent of an NASD member, Form SA-1, the Missouri Application for Renewal Registration as Agent.

(3) **Investment Adviser Application.** The application for registration as an investment adviser shall contain the information outlined in section 409.202(a) of the Act and in this rule. All applicants must file applications in accordance with the guidelines of the Investment Advisor Registration Depository (IARD) System, unless the commissioner has granted a hardship exemption under section (6).

(A) **Initial Registration.** The following shall be included in an initial application for registration:

1. Form ADV;
2. Form SADV-1, the State Covered Investment Adviser Affidavit and requested information;
3. Applicant's current balance sheet prepared within thirty (30) days of filing;
4. A listing of all investment adviser representatives who will be rendering investment advice for the firm in this state; and
5. Payment of the filing fee.

(B) **Renewal Registration.** The following shall be submitted in a renewal registration:

1. Payment of the filing fee.

(4) **Federal Covered Adviser Notice Filing.** The notice filing of a federal covered adviser transacting business in this state shall be filed in accordance with the guidelines of the IARD System and include the following:

(A) **Initial Notice Filing.** The following shall be submitted in an initial notice filing:

1. Form ADV; and
2. Payment of filing fee.

(B) **Renewal Notice Filing.** The following shall be submitted in a renewal notice filing:

1. Payment of filing fee.

(5) **Investment Adviser Representative Application.** The application for registration as an investment adviser representative shall contain the information outlined in section 409.202(a), RSMo and in this rule. All applicants must file applications with the commissioner or in accordance with the guidelines of the CRD System, unless the commissioner has granted a hardship exemption under section (6).

(A) **Initial Registration.** The following shall be included in an initial application for registration:

1. Form U-4;
2. Documentation of qualification under examination requirements; and
3. Payment of filing fee.

(B) **Renewal Registration.** The following shall be submitted in a renewal registration:

1. Payment of filing fee.

(6) **Hardship Exemption for Investment Advisers and Investment Adviser Representatives from IARD System and CRD System.**

(A) An investment adviser or investment adviser representative may request a hardship exemption from applying for registration in electronic format through the IARD System or CRD System by filing with the commissioner:

1. Form SADV-SH;
2. Payment of one hundred dollars (\$100) filing fee.

(B) The commissioner may grant a hardship exemption if filing an application in electronic format would subject the applicant to unreasonable burden or expense.

(7) **Amendments to Application.** Any amendment of an application pursuant to section 409.203(d), RSMo and 15 CSR 30-51.160(3) shall be filed with the appropriate form marked AMENDED.

(8) **Agricultural Cooperative Issuer Agents.** An individual who represents an issuer for the purpose of effecting transactions in a security exempted by clause (5) of section 409.402(a), RSMo, and seeks an exception from the definition of agent shall submit the following:

(A) Form SE-2, Application for Exception from Definition as Agent for Sellers of Agricultural Cooperative Securities;

(B) Filing of copies of all sales and solicitation material to be used by the applicant; and

(C) Filing of copies of any agreements between the issuer and the applicant regarding commissions or other remuneration to be

received for effecting transactions in the previously mentioned securities.

AUTHORITY: sections 409.202 and 409.413(a), RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Rescinded and readopted: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 51—Broker-Dealers, Agents, Investment Advisers and Representatives of Investment Advisers

PROPOSED RESCISSON

15 CSR 30-51.030 Examination. This rule prescribed the policies and procedures for administering examinations of applicants for registration as broker-dealer, agent and investment adviser, and of persons who will represent an investment adviser.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that more clearly prescribes the examination requirements of applicants for registration as broker-dealer, agent and investment adviser, and investment adviser representatives.

AUTHORITY: sections 409.202, 409.204(b)(6) and 409.413(a), RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

PROPOSED RULE

15 CSR 30-51.030 Examination Requirement

PURPOSE: This rule prescribes the examination requirements of applicants for registration as broker-dealer, agent and investment adviser, and investment adviser representatives.

(1) Every applicant for registration as a broker-dealer, agent, investment adviser or investment adviser representative shall pass the written examinations required by the National Association of Securities Dealers (NASD), and this rule.

(2) The following examinations are required for the following applicants:

(A) Broker-Dealer Agent Application. Agents of general securities broker-dealers are required to take and pass:

1. The Series 7 examination; and
2. Either Series 63 or the Series 66 examination.

(B) Specialized Broker-Dealer Agent or Issuer Agent Application. Agents of specialized broker-dealers or issuers are required to take and pass:

1. The applicable NASD examination; and
2. Either the Series 63 or the Series 66 examination.

(C) Investment Adviser Representatives Application. Investment adviser representatives are required to take and pass:

1. The Series 65 examination; or
2. Both the Series 66 and the Series 7 examinations.

(D) Investment Adviser Qualifying Officers Application. Qualifying officers of investment advisers are required to take and pass:

1. The Series 7 examination; and
2. Either the Series 65 or Series 66 examination with a score of at least eighty percent (80%).

(3) Waiver of Examination Requirement for Broker-Dealer Agents. The commissioner may by order grant an agent registration to an applicant that has not complied with the examination requirements set forth in 15 CSR 30-51.030(2) if granting the registration is in the public interest and the applicant is able to demonstrate exceptional experience in and knowledge of the securities markets and applicable regulations, or the broker-dealer agent has taken and passed the previous equivalent of the required examination and has been previously registered as a broker-dealer agent with the NASD. For agents of NASD members, unless a proceeding under section 409.204(c), RSMo has been instituted, a waiver of the examination requirement by the NASD shall be deemed a waiver by the commissioner.

(4) Waiver of Examination Requirement for Investment Adviser Representatives. The examination requirement for applicants may be waived if the examination is not necessary for the protection of advisory clients. Persons with the following qualifications may qualify for a waiver of the examination requirement:

(A) Investment Adviser Representatives. Applicants for investment adviser representative may qualify for a waiver of the examination requirement in 15 CSR 30-51.030(2)(C)2., if the applicant currently holds one (1) of the following designations:

1. Certified Financial Planner (CFP) awarded by the International Board of Standards and Practices for Certified Financial Planners, Inc.;
2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
4. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
5. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.;
6. Certified Investment Management Consultant (CIMC) awarded by the Institute for Certified Investment Management Consultants;

7. Certified Investment Management Analyst (CIMA) awarded by the Investment Management Consultants Association; or

8. Such other professional designation as the commissioner may by order recognize.

(B) Investment Adviser Qualifying Officers. Applicants for Investment adviser qualifying officer may qualify for a waiver of the examination requirement in 15 CSR 30-51.030(2)(D)2. if the applicant:

1. Had a passing score of at least seventy percent (70%) on either the Series 65 or Series 66 examination, and provided written assurance to the commissioner that the investment adviser firm will be operating as a sole proprietorship and the applicant will not be supervising any other representatives for at least three (3) years;

2. Had a passing score of at least seventy percent (70%) on the previous versions of either the Series 65 or Series 66 examination, and has maintained an investment adviser representative or broker-dealer agent registration in Missouri or any other jurisdiction for at least ten (10) years;

3. Had a passing score of at least eighty percent (80%) on the Series 24, Series 9/10 or its previous equivalent, Series 27, or Series 63 examination, and has maintained an investment adviser representative or broker-dealer agent registration in Missouri or any other jurisdiction for at least fifteen (15) years; or

4. Has:

A. Held and maintained one of the following designations for at least the last ten (10) years:

(I) Certified Financial Planner (CFP) awarded by the International Board of Standards and Practices for Certified Financial Planners, Inc.;

(II) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(III) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(IV) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(V) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.;

(VI) Certified Investment Management Consultant (CIMC) awarded by the Institute for Certified Investment Management Consultants; or

(VII) Certified Investment Management Analyst (CIMA) awarded by the Investment Management Consultants Association; and

B. Either:

(I) Had a passing score of at least eighty percent (80%) on the Series 24, Series 9/10 or its previous equivalent, Series 27, Series 53, or Series 63 examination; or

(II) Has provided written assurance to the commissioner that the investment adviser firm will be operating as a sole proprietorship and the applicant will not be supervising any other representatives for at least three (3) years.

AUTHORITY: sections 409.202, 409.204(b)(6) and 409.413(a), RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Rescinded and readopted: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To

be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 51—Broker-Dealers, Agents, Investment Advisers and Representatives of Investment Advisers

PROPOSED RESCISSON

15 CSR 30-51.160 Effectiveness and Post-Effective Requirements. This rule specified when the registration of broker-dealers, agents and investment advisers becomes effective, reports required during effectiveness, and procedures for terminating the effectiveness and effecting withdrawal of registrations.

PURPOSE: *The commissioner of securities is proposing to rescind this rule and adopt a new rule that more specifies when the registration of broker-dealers, agents and investment advisers becomes effective, reports required during effectiveness, and procedures for terminating the effectiveness and effecting withdrawal of registrations.*

AUTHORITY: sections 409.201(b) and (d), 409.202, 409.204 and 409.413(a), RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Rescinded: Filed Dec. 17, 2001.

PUBLIC COST: *This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

PRIVATE COST: *This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

PROPOSED RULE

15 CSR 30-51.160 Effectiveness and Post-Effective Requirements

PURPOSE: *This rule specifies when the registration of broker-dealers, agents and investment advisers becomes effective, reports required during effectiveness, and procedures for terminating the effectiveness and effecting withdrawal of registrations.*

(1) Pending Applications for Registration.

(A) Effective Date of Registration. If no denial order is in effect, and no proceeding under section 409.204, RSMo is pending, registration shall become effective no later than noon of the thirtieth day after the application is filed. The running of this thirty (30)-day period is suspended during the time a denial order is in effect or a proceeding under section 409.204, RSMo is pend-

ing. The running of the thirty (30)-day period shall resume when the denial order is vacated or the proceeding under section 409.402, RSMo is no longer pending.

(B) Completeness of the Application. An application shall be considered complete when an application containing comprehensive responses to all applicable questions and all attachments and exhibits, as required by the Act or these rules, has been filed with the division. The commissioner may summarily postpone or suspend an application for the purpose of determining the completeness of an application or on other grounds as provided for in section 409.204(c).

(C) Orders of Cancellation for Incomplete Applications. Any application, the filing of which is not complete within a period of one (1) year following the application's original filing, shall be presumed subject to the entry of an order of cancellation pursuant to section 409.204(d), RSMo of the Act.

(2) Duration of Registration.

(A) Expiration of Registration. Every registration of a broker-dealer, agent, investment adviser, or investment adviser representative expires on December 31 of each year, unless renewed or unless sooner revoked, canceled, or withdrawn (sections 409.201(d) and 409.204, RSMo).

(B) Late Renewal Filings. Upon expiration of a registration any subsequent application for registration shall be considered and treated as an application for initial registration.

(C) Applications for renewal of registration filed directly with the commissioner shall be filed on the appropriate form marked renewal (see 15 CSR 30-51.020) with required information and exhibits, no earlier than sixty (60) days and no later than thirty (30) days before the expiration date of the registration concerned. Applications filed with the Central Registration Depository (CRD) System or Investment Advisor Registration Depository (IARD) System shall be timely filed in accordance with the requirements of the CRD or IARD.

(D) An applicant for renewal registration may incorporate by reference in the application documents previously filed to the extent the documents are currently accurate.

(3) Continuing Duty of Applicants and Registrants to Disclose Material Information.

(A) Amendments to Applications for Material Change. During the pendency of any application, or effectiveness of any registration, every broker-dealer, agent, investment adviser, or investment adviser representative shall immediately report to the commissioner in writing any material change in any information, answers, responses, exhibits, or schedules submitted or circumstances disclosed in its last prior application. A correcting amendment shall be filed with the division at the time of occurrence or discovery of these changes, and not later than thirty (30) days following the specified event or occurrence. If the application was submitted through the CRD System or IARD System, any amendment shall be submitted in accordance with the guidelines of the CRD or IARD System.

(B) Termination of an Agent or Investment Adviser Representative.

1. Duty of broker-dealer, issuer or investment adviser. When an agent's or representative's association with the broker-dealer, issuer or investment adviser is discontinued or terminated by either party, the broker-dealer, issuer or investment adviser must file within thirty (30) days of the discontinuance or termination, a notice of that fact, stating the date of and reasons for the discontinuance or termination (Form U-5 or by letter).

2. Duty of agent or investment adviser representative. When an agent's or representative's association with a broker-dealer or investment adviser registered in Missouri is discontinued or terminated by either party, the agent or investment adviser representative must file, within thirty (30) days of the discontinuance or

termination, amended documents reflecting association with another broker-dealer or investment adviser.

3. Temporary registration for transferring agents. A transferring agent may not transact business through the new broker-dealer until the agent has been granted a registration with the new firm, except a thirty (30)-day temporary registration may be granted to those agents on whose behalf a registered broker-dealer has requested a temporary registration. This request must be made on the Form U-4 prior to any securities transactions by the agent through the new broker-dealer and within thirty (30) days following the termination from the previous firm. No such temporary registration will be granted upon termination from an issuer.

(C) Acquisition of Broker-Dealer or Investment Adviser.

1. When a person or a group of persons, directly or indirectly or acting by or through one (1) or more persons, proposes to acquire a controlling interest in a broker-dealer or investment adviser registrant and when the acquirer, within the preceding ten (10) years, has committed any act that would result in a yes answer to any disciplinary question on the Form BD or ADV or would require disclosure under 15 CSR 30-51.160(3), the resulting entity, prior to the acquisition, shall file with the division:

A. A new application for registration on the forms prescribed by rule, together with all required exhibits and fees; and

B. At the time the new application is filed, a notice of withdrawal, termination or cancellation of registration of the acquired entity on the forms prescribed by rule, effective upon disposition of the new application by the division.

2. For purposes of this section, controlling interest means possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract or otherwise. Any individual or firm that directly or indirectly has the right to vote twenty-five percent (25%) or more of the voting securities of a company or is entitled to twenty-five percent (25%) or more of its profits is presumed to control that company.

(4) Withdrawal of Registration. Every broker-dealer and investment adviser who desires to withdraw their registration shall file the appropriate Form BDW or ADV-W. Every federal covered adviser who desires to withdraw their notice filing shall file the appropriate ADV-W.

(5) Merger, Consolidation or Reorganization of Broker-Dealers. In the event of a merger, consolidation, or reorganization of an existing registered broker-dealer, and the change can be effected through the CRD System, then such documentation and information shall be filed in accordance with the guidelines of the CRD System. If the change cannot be processed through the CRD System, the following documents must be filed with the commissioner by the participating broker-dealers within ten (10) days following a merger, consolidation or reorganization:

(A) The broker-dealer dissolving at the consummation of the merger or who will become a part of an existing broker-dealer upon reorganization or consolidation must file:

1. A termination of its broker-dealer registration on Form BDW;

2. A termination of all agent registrations; and

3. A complete explanation of the proposed merger, consolidation or reorganization accompanied by the agreement effecting the merger, consolidation or reorganization.

(B) The broker-dealer who will be the surviving corporation upon consummation of the merger or who will be the named broker-dealer after the reorganization or consolidation must file:

1. A complete explanation of the proposed merger;

2. Form U-4 applications plus supporting documents of all registered agents of the dissolving broker-dealer to be transferred to the surviving, consolidated or reorganized broker-dealer in

accordance with 15 CSR 30-51.160(3) and 15 CSR 30-51.020; and

3. If the name of the surviving, consolidated or reorganized broker-dealer will change, an amended Form BD, as appropriate and all other properly amended documents required by 15 CSR 30-51.020 and 15 CSR 30-51.160.

AUTHORITY: sections 409.201(b) and (d), 409.202, 409.204 and 409.413(a), RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Rescinded and readopted: Filed Dec. 17, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program

PROPOSED RESCISSON

19 CSR 60-50.200 Purpose and Structure. This rule described the purpose of the Certificate of Need (CON) statute and the structure of the Missouri Health Facilities Review Committee.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.200 Purpose and Structure

PURPOSE: This rule describes the purpose of the Certificate of Need (CON) statute and the structure of the Missouri Health Facilities Review Committee.

(1) The Certificate of Need (CON) statute, sections 197.300–197.366, RSMo became effective September 28, 1979, except those sections which were not effective until October 1, 1980 or later. CON had its origin in the federal Public Law 93-641, 1974, and was initially intended to address issues of need, cost, and distribution of health services, as well as other factors which impact the health of the population.

(2) The purpose of the CON statute is to achieve the highest level of health for Missourians through cost containment, reasonable access, and public accountability. The goals are to:

- (A) Review proposed health care services;
- (B) Contain health costs;
- (C) Promote economic value;
- (D) Negotiate competing interests;
- (E) Prevent unnecessary duplication; and
- (F) Disseminate health-related information to interested and affected parties.

(3) The CON statute is administered by the nine (9)-member Missouri Health Facilities Review Committee (committee). Five (5) members are appointed by the governor, two (2) by the president pro tem of the senate, and two (2) by the speaker of the house, each serving two (2)-year terms or until replaced.

(4) On behalf of the committee, the CON Program provides technical and administrative services as shown in rule 19 CSR 60-50.900.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program

PROPOSED RESCISSON

19 CSR 60-50.300 Definitions for the Certificate of Need Process. This rule defined the terms used in the Certificate of Need (CON) review process.

PURPOSE: *This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.*

AUTHORITY: section 197.320, RSMo Supp. 1999. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency amendment filed Oct. 20, 1998, effective Oct. 30, 1998, expired April 27, 1999. Amended: Filed Oct. 20, 1998, effective April 30, 1999. Amended: Filed Jan. 4, 2000, effective July 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: *This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

PRIVATE COST: *This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.300 Definitions for the Certificate of Need Process

PURPOSE: *This rule defines the terms used in the Certificate of Need (CON) review process.*

(1) Applicant means all owner(s) and operator(s) of any new institutional health service.

(2) By or on behalf of a health care facility includes any expenditures made by the facility itself as well as capital expenditures made by other persons that assist the facility in offering services to its patients/residents.

(3) Cost means—

(A) Price paid or to be paid by the applicant for a new institutional health service to acquire, purchase or develop a health care facility or major medical equipment; or

(B) Fair market value of the health care facility or major medical equipment as determined by the current selling price at the date of the application as quoted by builders or architects for similar facilities or normal suppliers of the requested equipment.

(4) Construction of a new hospital means the establishment of a newly-licensed facility at a specific location under the Hospital Licensing Law, section 197.020.2, RSMo, as the result of building, renovation, modernization, and/or conversion of any structure not licensed as a hospital.

(5) Expedited application means a shorter than full application and review period as defined in 19 CSR 60-50.420 and 19 CSR 60-50.430 for any long-term care expansion or replacement as defined in section 197.318.8-10, long-term care renovation and modernization, or the replacement of any major medical equipment as defined in section (11) of this rule which holds a Certificate of Need (CON) previously granted by the Missouri Health Facilities Review Committee (committee). Applications for replacement of major medical equipment not previously approved by the committee should apply for a full review.

(6) Generally accepted accounting principles pertaining to capital expenditures include, but are not limited to—

(A) Expenditures related to acquisition or construction of capital assets;

(B) Capital assets are investments in property, plant and equipment used for the production of other goods and services approved by the committee; and

(C) Land is not considered a capital asset until actually converted for that purpose with commencement of aboveground construction approved by the committee.

(7) Health care facility means those described in section 197.366, RSMo.

(8) Health care facility expenditure includes the capital value of new construction or renovation costs, architectural/engineering fees, equipment not in the construction contract, land acquisition costs, consultants'/legal fees, interest during construction, predevelopment costs as defined in section 197.305(13), RSMo, in excess of one hundred fifty thousand dollars (\$150,000), any existing land and building converted to medical use for the first time, and any other capitalizable costs as listed on the "Proposed Project Budget" Form MO 580-1863.

(9) Health maintenance organizations means entities as defined in section 354.400(10), RSMo, except for activities directly related to the provision of insurance only.

(10) Interested party means any licensed health care provider or other affected person who has expressed an interest in the Certificate of Need (CON) process or a CON application.

(11) Major medical equipment means any piece of equipment and collection of functionally related devices acquired to operate the equipment and additional related costs such as software, shielding, and installation, with an aggregate cost of one (1) million dollars or more, when the equipment is intended to provide the following services:

- (A) Cardiac Catheterization;
- (B) CT (Computed Tomography);
- (C) Gamma Knife;
- (D) Hemodialysis;
- (E) Lithotripsy;
- (F) MRI (Magnetic Resonance Imaging);

- (G) PET (Positron Emission Tomography);
- (H) Linear Accelerator;
- (I) Open Heart Surgery;
- (J) EBCT (Electron Beam Computed Tomography);
- (K) PET/CT (Positron Emission Tomography/Computed Tomography); or
- (L) Evolving Technology.

(12) Nonsubstantive project includes, but is not limited to, at least one (1) of the following situations:

(A) An expenditure which is required solely to meet federal or state requirements or involves predevelopment costs or the development of a health maintenance organization;

(B) The construction or modification of nonpatient care services, including parking facilities, sprinkler systems, heating or air-conditioning equipment, fire doors, food service equipment, building maintenance, administrative equipment, telephone systems, energy conservation measures, land acquisition, medical office buildings, and other projects or functions of a similar nature; or

(C) Expenditures for construction, equipment, or both, due to an act of God or a normal consequence of maintenance, but not replacement, of health care facilities, beds, or equipment.

(13) Offer, when used in connection with health services, means that the applicant asserts having the capability and the means to provide and operate the specified health services.

(14) Predevelopment costs mean expenditures as defined in section 197.305(13), RSMo, including consulting, legal, architectural, engineering, financial and other activities directly related to the proposed project, but excluding the application fee for submission of the application for the proposed project.

(15) Related organization means an organization that is associated or affiliated with, has control over or is controlled by, or has any direct financial interest in, the organization applying for a project including, without limitation, an underwriter, guarantor, parent organization, joint venturer, partner or general partner.

(16) Service area means a geographic region appropriate to the proposed service, documented by the applicant and approved by the committee.

(17) The most current version of Form MO 580-1863 may be obtained by mailing a written request to the Certificate of Need Program (CONP), 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP office, or, if technically feasible, by downloading a copy of the form from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency amendment filed Oct. 20, 1998, effective Oct. 30, 1998, expired April 27, 1999. Amended: Filed Oct. 20, 1998, effective April 30, 1999. Amended: Filed Jan. 4, 2000, effective July 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSON

19 CSR 60-50.310 Guidelines for Specific Health Services. This rule defined specific health services subject to the Certificate of Need (CON) review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1999. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective May 30, 2000. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSON

19 CSR 60-50.400 Letter of Intent Process. This rule delineated the process for submitting a Letter of Intent to begin the Certificate of Need (CON) review process and outlined the projects subject to CON review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1998. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency amendment

filed Nov. 16, 1995, effective Nov. 26, 1995, expired May 23, 1996. Amended: Filed Nov. 15, 1995, effective April 30, 1996. Emergency rescission filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, terminated Sept. 21, 1997. Emergency rule filed Sept. 11, 1997, effective Sept. 21, 1997, expired March 19, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.400 Letter of Intent Process

PURPOSE: This rule delineates the process for submitting a Letter of Intent to begin the Certificate of Need (CON) review process and outlines the projects subject to CON review.

(1) Applicants shall submit a Letter of Intent (LOI) package to begin the Certificate of Need (CON) review process at least thirty (30) days prior to the submission of the CON application and will remain valid in accordance with the following time frames:

(A) For full reviews, expedited equipment replacements, expedited long-term care (LTC) renovation or modernization reviews and expedited LTC facility replacement reviews, an LOI is valid for six (6) months;

(B) For expedited LTC bed expansion reviews in accordance with section 197.318.8, RSMo, an LOI is valid for twenty-four (24) months; and

(C) For non-applicability reviews, an LOI is valid for six (6) months.

(2) Once filed, an LOI may be amended, except for project address, not later than ten (10) days in advance of the CON application filing, or it may be withdrawn at any time without prejudice.

(3) A LTC bed expansion or replacement as defined in these rules includes all of the provisions pursuant to section 197.318.8 through 197.318.10, RSMo, requiring a CON application, but allowing shortened information requirements and review time frames. When an LOI for an LTC bed expansion, except replacement(s), is filed, the CONP staff shall immediately request certi-

fication for that facility of average licensed bed occupancy and final Class 1 patient care deficiencies for the most recent six (6) consecutive calendar quarters by the Division of Health Standards and Licensure (DHSL), Department of Health and Senior Services, through an LTC Facility Expansion Certification (Form MO 580-2351) to verify compliance with occupancy and deficiency requirements pursuant to section 197.318.8, RSMo. Occupancy data shall be taken from the DHSL's most recently published Quarterly Survey of Hospital and Nursing Home (or Residential Care Facility) Bed Utilization reports. For LTC bed expansions or replacements, the sellers and purchasers shall be defined as the owner(s) and operator(s) of the respective facilities, which includes building, land, and license. On the Purchase Agreement (Form MO 580-2352), both the owner(s) and operator(s) of the purchasing and selling facilities should sign.

(4) The Certificate of Need Program (CONP) staff, as an agent of the Missouri Health Facilities Review Committee (committee), will review LOIs according to the following provisions:

(A) Major medical equipment is reviewed as an expenditure on the basis of cost, regardless of owners or operators, or location (mobile or stationary);

(B) The CONP staff shall test the LOI for applicability in accordance with statutory provisions for expenditure minimums, exemptions, and exceptions;

(C) If the test verifies that a statutory exception or exemption is met on a proposed project, or is below all applicable expenditure minimums, the committee chair may issue a Non-Applicability CON letter indicating the application review process is complete; otherwise, the CONP staff shall add the proposal to a list of Non-Applicability proposals to be considered at the next regularly scheduled committee meeting;

(D) If an exception or exemption is not met, and if the proposal is above any applicable expenditure minimum, then a CON application will be required for the proposed project;

(E) A Non-Applicability CON letter will be valid subject to the following conditions:

1. Any change in the project scope, including change in type of service, cost, operator, ownership, or site, could void the effectiveness of the letter and require a new review; and

2. Final audited project costs must be provided on a Periodic Progress Report (Form MO 580-1871);

(F) A CON application must be made if:

1. The project involves the development of a new health care facility costing in excess of one (1) million dollars;

2. The project involves the acquisition or replacement of major medical equipment in any setting not licensed under Chapter 198, RSMo, costing in excess of one (1) million dollars;

3. The project involves the acquisition or replacement of major medical equipment for a health care facility licensed under Chapter 198, RSMo, costing in excess of four hundred thousand dollars (\$400,000);

4. The project involves the acquisition of any equipment or beds in a long-term care hospital meeting the requirements found in 42 CFR section 412.23(e) at any cost;

5. The project involves a capital expenditure, but not additional beds, by or on behalf of an existing health care facility licensed under Chapter 198, RSMo, costing in excess of one (1) million dollars; or

6. Prior to January 1, 2003, the project involves additional long-term care (licensed or certified residential care facility I or II, intermediate care facility, or skilled nursing facility) beds or LTC bed expansions or replacements as defined in section (3) above of this rule, regardless of cost, with certain exemptions and exceptions.

(5) For an LTC bed expansion proposal pursuant to section 197.318.8(1)(e), RSMo, the CONP staff shall request occupancy

verification by the DHSL who shall also provide a copy to the applicant.

(6) Nonsubstantive projects are waived from review by the authority of section 197.330.1(8), RSMo, and any projects seeking such a determination shall submit information through the LOI process; those meeting the nonsubstantive definition shall be posted for review on the CON web site at least twenty (20) days in advance of the committee meeting when they are scheduled to be confirmed by the committee.

(7) The most current version of Forms MO 580-2351, MO 580-2352, and MO 580-1871 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Emergency rescission and rule filed Dec. 14, 2000, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSON

19 CSR 60-50.410 Letter of Intent Package. This rule provided the information requirements and the details of how to complete the Letter of Intent package to begin the Certificate of Need (CON) review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program**

PROPOSED RULE

19 CSR 60-50.410 Letter of Intent Package

PURPOSE: This rule provides the information requirements and the details of how to complete the Letter of Intent package to begin the Certificate of Need (CON) review process.

(1) The Letter of Intent (LOI) (Form MO 580-1860) shall be completed as follows:

(A) Project Information: sufficient information to identify the intended service, such as construction, renovation, new or replacement equipment, and address or plat map identifying a specific site rather than a general area (county designation alone is not sufficient);

(B) Applicant Identification: the full legal name of all owner(s) and operator(s) which compose the applicant(s) who, singly or jointly, propose to develop, offer, lease or operate a new institutional health service within Missouri; provide the corporate entity, not individual names, of the corporate board of directors or the facility administrator;

(C) Type of Review: the applicant shall indicate if the review is for a full review, expedited review or a non-applicability review;

(D) Project Description: information which provides details of the number of beds to be added, deleted, or replaced, square footage of new construction and/or renovation, services affected and equipment to be acquired. If a replacement project, information which provides details of the facilities or equipment to be replaced, including name, location, distance from the current site, and its final disposition;

(E) Estimated Project Cost: total proposed expenditures necessary to achieve application's objectives—not required for long-term care (LTC) bed expansions pursuant to section 197.318.8(1), RSMo;

(F) Authorized Contact Person Identification: the full name, title, address (including association), telephone number, e-mail, and fax number; and

(G) Applicability: Page 2 of the LOI must be filled out by applicants requesting a non-applicability review to provide the reason and rationale for the exemption or exception being sought.

(2) If a non-applicability review is sought, applicants shall submit the following additional information:

(A) Proposed Expenditures (Form MO 580-2375) including information which details all methods and assumptions used to estimate project costs;

(B) Schematic drawings; and

(C) In addition to the above information, for exceptions or exemptions, documentation of other provisions in compliance with the Certificate of Need (CON) statute, as described in sections (3) through (6) below of this rule.

(3) If an exemption is sought for a residential care facility (RCF) I or II of one hundred (100) beds or less operated by a religious organization pursuant to section 197.305(7), RSMo, applicants shall submit the following additional information:

(A) A letter from the Internal Revenue Service documenting the religious organization's 501(c)(3) tax-exempt status;

(B) Copies of the religious organization's By-Laws and Articles of Incorporation stating the organization's religious mission;

(C) A letter from the religious organization stipulating that it will be the licensed operator and public funds would not be used for the purchase or operation of the proposed facility; and

(D) Any other documents necessary to establish compliance with section 197.305(7), RSMo.

(4) If an exemption is sought for an RCF I or II pursuant to section 197.312, RSMo, applicants shall submit documentation that this facility had previously been owned or operated for or, on behalf of St. Louis City.

(5) If an exemption is sought pursuant to section 197.314(1), RSMo, for a sixty (60)-bed stand-alone facility designed and operated exclusively for the care of residents with Alzheimer's disease or dementia and located in a tax increment financing district established prior to 1990 within any county of the first classification with a charter form of government containing a city with a population of over three hundred fifty thousand (350,000) and which district also has within its boundaries a skilled nursing facility (SNF), applicants shall submit documentation that the health care facility would meet all of these provisions.

(6) If an exemption is sought pursuant to section 197.314(2), RSMo, for either of two (2) SNFs of up to twenty (20) beds each, by a Chapter 198 facility that is owned or operated by a not-for-profit corporation which was created by a special act of the Missouri general assembly, is exempt from federal income tax as an organization described in section 501(c)(3) of the *Internal Revenue Code* of 1986, is owned by a religious organization and is to be operated as part of a continuing care retirement community offering independent living, residential care and skilled care which had no skilled nursing beds as of January 1, 1999, documentation that the health care facility would meet all of these provisions.

(7) The LOI must have an original signature for the contact person until the Certificate of Need Program (CONP), when technically ready, shall allow for submission of electronic signatures.

(8) The most current version of Forms 580-1860 and MO 580-2375 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and

rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than ten thousand dollars (\$10,000) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**FISCAL NOTE
PRIVATE COST**

I. 19 CSR 60-50.410

Title: 19 - DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division: 60 - Missouri Health Facilities Review Committee

Chapter: 50 - Certificate of Need Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 19 CSR 60-50.410 Letter of Intent Package

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely to be affected by the addoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
50	Acute and long term care facilities	\$5,000
25	Long term care facilities	\$5,000

III. WORKSHEET

Based on the following assumptions and estimates, the Private Entity Cost associated with the Proposed Rule would be calculated as follows:

Letter of Intent Cost	\$100
Letter of Intent Cost for LTC Expansion Projects	\$200
Letter of Intent Cost for Non-Applicability Review	\$100
Annual Letter of Intent Cost = (50 x \$100) + (25 x \$200) = \$10,000	
TOTAL	\$10,000

IV. ASSUMPTIONS

Based on past experience, it is estimated that the proposed CON Rules will generate approximately 75 Letters of Intent annually.

(a) It is assumed that applicants will file a Letter of Intent for Full Reviews, Expedited Reviews and Non-Applicability Reviews for projects not involving acute care facilities. The Letter of Intent form is normally two pages in length. Allowing \$50 per page for preparation, the cost would be approximately \$100. It is estimated that 50 such projects would be submitted annually.

(b) For applicants applying for a statutory exception for a long term care (LTC) bed expansion through purchase of LTC beds, a LTC Facility Expansion form and a LTC Facility Purchase Agreement form must also be submitted. Allowing \$50 for preparation of the LTC Facility Expansion form and \$50 LTC Facility Purchase Agreement form, would add \$100 for these types of projects. It is estimated that 25 such projects would be submitted annually.

Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program

PROPOSED RESCISSON

19 CSR 60-50.420 Application Process. This rule delineated the process for submitting a Certificate of Need (CON) application for a CON review.

PURPOSE: *This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.*

AUTHORITY: section 197.320, RSMo Supp. 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: *This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

PRIVATE COST: *This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.420 Review Process

PURPOSE: *This rule delineates the process for submitting a Certificate of Need (CON) application for a CON review.*

- (1) The Certificate of Need (CON) filing deadlines are as follows:
 - (A) For full applications, at least seventy-one (71) days prior to each Missouri Health Facilities Review Committee (committee) meeting;
 - (B) For expedited equipment replacement applications, expedited long-term care (LTC) facility renovation or modernization applications, and expedited LTC bed expansions and replacements pursuant to section 197.318.8 through 197.318.10, RSMo, the tenth day of each month, or the next business day thereafter if that day is a holiday or weekend;
 - (C) For non-applicability reviews, the Letter of Intent (LOI) filing may occur at any time.

(2) A CON application filing that does not substantially conform with the LOI, including any change in owner(s), operator(s), scope of services, or location, shall not be considered a CON application and shall be subject to the following provisions:

(A) The Certificate of Need Program (CONP) staff shall return any nonconforming submission; or

(B) The committee may issue an automatic denial unless the applicant withdraws the attempted application.

(3) All filings must occur at the principal office of the committee during regular business hours. The CONP staff, as an agent of the committee, shall provide notification of applications received through publication of the Application Review Schedule (schedule), as follows:

(A) For full applications the schedule shall include the filing date of the application, a brief description of the proposed service, the time and place for filing comments and requests for a public hearing, and the tentative date of the meeting at which the application is scheduled for review. Publication of the schedule shall occur on the next business day after the filing deadline. The publication of the schedule is conducted through the following actions:

1. The schedule shall be submitted to the secretary of state's office for publication in the next regularly scheduled *Missouri Register*;

2. A press release about the CON application schedule shall be sent to all newspapers of general circulation in Missouri as supplied by the Department of Health and Senior Services (DHSS), Office of Public Information;

3. The schedule shall be posted on the CON web site; and

4. The schedule shall be mailed to all affected persons who have registered with the CONP staff as having an interest in such CON applications.

(B) For expedited applications the schedule shall include the filing date of the application, a brief description of the proposed service, the time and place for filing comments and requests for a public hearing, and the tentative decision date for the application. Publication of the schedule shall occur on the next business day after the filing deadline. The publication of the schedule is conducted through the following actions:

1. The schedule shall be submitted to the secretary of state's office for publication in the next regularly scheduled *Missouri Register*; and

2. The schedule shall be posted on the CON web site.

(C) For non-applicability reviews, the listing of non-applicability letters to be confirmed shall be posted on the CON web site at least twenty (20) days prior to each scheduled meeting of the committee where confirmation is to take place.

(4) When an application for a full review is filed pursuant to section 197.318.1, RSMo, the CONP staff shall immediately request certification of licensed and available bed occupancy and deficiencies for each of the most recent four (4) consecutive calendar quarters in the county and fifteen (15)-mile radius by the DHSS.

(5) The CONP staff shall review CON applications relative to the Criteria and Standards in the order filed.

(6) The CONP staff shall notify the applicant in writing regarding the completeness of a full CON application within fifteen (15) calendar days of filing or within five (5) working days for an expedited application.

(7) Verbal information or testimony shall not be considered part of the application.

(8) Subject to statutory time constraints, the CONP staff shall send its written analysis to the committee as follows:

(A) For full CON applications, the CONP staff shall send the analysis twenty (20) days in advance of the first committee meeting following the seventieth day after the CON application is filed. The written analysis of the CONP staff shall be sent to the applicant no less than fifteen (15) days before the meeting.

(B) For expedited applications which meet all statutory and rules requirements and which have no opposition, the CONP staff shall send its written analysis to the committee and the applicant within two (2) working days following the expiration of the thirty (30)-day public notice waiting period or the date upon which any required additional information is received, whichever is later.

(C) For expedited applications which do not meet all statutory and rules requirements or those which have opposition, they will be considered at the earliest scheduled committee meeting where the written analysis by the CONP staff can be sent to the committee and the applicant at least seven (7) days in advance.

(9) See rule 19 CSR 60-50.600 for a description of the CON decision process.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSON

19 CSR 60-50.430 Application Package. This rule provided the information requirements and the application format of how to complete a Certificate of Need (CON) application for a CON review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and

rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program**

PROPOSED RULE

19 CSR 60-50.430 Application Package

PURPOSE: This rule provides the information requirements and the application format of how to complete a Certificate of Need (CON) application for a CON review.

(1) A Certificate of Need (CON) application package shall be accompanied by an application fee which shall be a nonrefundable minimum amount of one thousand dollars (\$1,000) or one-tenth of one percent (0.1%), which may be rounded up to the nearest dollar, of the total project cost, whichever is greater, made payable to the "Missouri Health Facilities Review Committee."

(2) A written application package consisting of an original and eleven (11) bound copies (comb or three (3)-ring binder) shall be prepared and organized as follows:

(A) The CON Applicant's Completeness Checklists and Table of Contents should be used as follows:

1. Include at the front of the application;
2. Check the appropriate "done" boxes to assure completeness of the application;
3. Number all pages of the application sequentially and indicate the page numbers in the appropriate blanks;
4. Check the appropriate "n/a" box if an item in the Review Criteria is "not applicable" to the proposal; and
5. Restate (preferably in bold type) and answer all items in the Review Criteria.

(B) The application package should use one of the following CON Applicant's Completeness Checklists and Table of Contents appropriate to the proposed project, as follows:

1. New Hospital Application (Form MO 580-2501);
2. New Long-Term Care (LTC) Beds Application (Form MO 580-2502);
3. New/Additional Equipment Application (Form MO 580-2503);
4. Expedited LTC Bed Replacement/Expansion Application (Form MO 580-2504);
5. Expedited LTC Renovation/Modernization Application (Form MO 580-2505); or

6. Expedited Equipment Replacement Application (Form MO 580-2506).

(C) The application should be formatted into dividers using the following outline:

1. Divider I. Application Summary;
2. Divider II. Proposal Description;
3. Divider III. Service-Specific Criteria and Standards; and
4. Divider IV. Financial Feasibility (only if required for full applications).

(D) Support Information should be included at the end of each divider section to which it pertains, and should be referenced in the divider narrative. For applicants anticipating having multiple applications in a year, master file copies of such things as maps, population data (if applicable), board memberships, IRS Form 990, or audited financial statements may be submitted once, and then referred to in subsequent applications, as long as the information remains current.

(E) The application package should document the need or meet the additional information requirements in 19 CSR 60-50.450(4)-(6) for the proposal by addressing the applicable Service-Specific Criteria and Standards using the standards in 19 CSR 60-50.440 through 19 CSR 60-50.460 plus providing additional documentation to substantiate why any proposed alternative Criteria and Standards should be used.

(3) An Application Summary shall be composed of the completed forms in the following order:

(A) Applicant Identification and Certification (Form MO 580-1861). Additional specific information about board membership may be requested, if needed;

(B) A completed Representative Registration (Form MO 580-1869) for the contact person and any others as required by section 197.326(1), RSMo; and

(C) A detailed Proposed Project Budget (Form MO 580-1863), with an attachment which details how each line item was determined including all methods and assumptions used.

(4) The Proposal Description shall include documents which:

(A) Provide a complete detailed description and scope of the project, and identify all the institutional services or programs which will be directly affected by this proposal;

(B) Describe the developmental details including:

1. A legible city or county map showing the exact location of the facility or health service, and a copy of the site plan showing the relation of the project to existing structures and boundaries;

2. Preliminary schematics for the project that specify the functional assignment of all space which will fit on an eight and one-half inch by eleven inch (8 1/2" × 11") format (not required for replacement equipment projects). The CON Program staff may request submission of an electronic version of the schematics, when appropriate. The function for each space, before and after construction or renovation, shall be clearly identified and all space shall be assigned;

3. Evidence of submission of architectural plans to the Division of Health Standards and Licensure (DHSL) engineer for long-term care projects and the DHSL architect for other facilities (not required for replacement equipment projects);

4. For long-term care proposals, existing and proposed gross square footage for the entire facility and for each institutional service or program directly affected by the project. If the project involves relocation, identify what will go into vacated space;

5. Documentation of ownership of the project site, or that the site is available through a signed option to purchase or lease; and

6. Proposals which include major and other medical equipment should include an equipment list with prices and documentation in the form of bid quotes, purchase orders, catalog prices, or other sources to substantiate the proposed equipment costs;

(C) Proposals for new hospitals, new long-term care (LTC) beds, or new major medical equipment must define the community to be served.

1. Describe the service area(s) population using year 2005 populations and projections which are consistent with those provided by the Bureau of Health Data Analysis (or the Office of Social and Economic Data Analysis (OSEA) when additional LTC beds are sought) which can be obtained by contacting:

Chief, Bureau of Health Data Analysis

Center for Health Information Management and Evaluation
(CHIME)

Department of Health and Senior Services
PO Box 570, Jefferson City, MO 65102

Telephone: (573) 751-6278

or

Director, Office of Social and Economic Data Analysis
625 Clark Hall, University of Missouri
Columbia, MO 65211
Telephone: (573) 882-7396.

There will be a charge for any of the information requested, and seven to fourteen (7-14) days should be allowed for a response from the CHIME or OSEA. Information requests should be made to CHIME or OSEA such that the response is received at least two (2) weeks before it is needed for incorporation into the CON application.

2. Use the maps and population data received from CHIME or OSEA with the CON Applicant's Population Determination Method to determine the estimated population, as follows:

A. Utilize all of the population for zip codes entirely within the fifteen (15)-mile radius for LTC beds or geographic service area for hospitals and major medical equipment;

B. Reference a state highway map (or a map of greater detail) to verify population centers (see Bureau of Health Data Analysis information) within each zip code overlapped by the fifteen (15)-mile radius or geographic service area;

C. Categorize population centers as either "in" or "out" of the fifteen (15)-mile radius or geographic service area and remove the population data from each affected zip code categorized as "out";

D. Estimate, to the nearest ten percent (10%), the portion of the zip code area that is within the fifteen (15)-mile radius or geographic service area by "eyeballing" the portion of the area in the radius (if less than five percent (5%), exclude the entire zip code);

E. Multiply the remaining zip code population (total population less the population centers) by the percentage determined in "D" (due to numerous complexities, population centers will not be utilized to adjust overlapped zip code populations in Jackson, St. Louis, and St. Charles counties or St. Louis City; instead, the total population within the zip code will be considered uniform and multiplied by the percentage determined in "D");

F. Add back the population center(s) "inside" the radius or region for zip codes overlapped; and

G. The sum of the estimated zip codes, plus those entirely within the radius, will equal the total population within the fifteen (15)-mile radius or geographic service area.

3. Provide other statistics, such as studies, patient origin or discharge data, Hospital Industry Data Institutes (HIDI) information, or consultants' reports, to document the size and validity of any proposed user-defined "geographic service area";

(D) Identify specific community problems or unmet needs which the proposed or expanded service is designed to remedy or meet;

(E) Provide historical utilization for each existing service affected by the proposal for each of the past three (3) years;

(F) Provide utilization projections through at least three (3) years beyond the completion of the project for all proposed and existing services directly affected by the project;

(G) If an alternative methodology is added, specify the method used to make need forecasts and describe in detail whether projected utilizations will vary from past trends;

(H) Provide the current and proposed number of licensed beds by type for projects which would result in a change in the licensed bed complement of the LTC facility.

(4) Document that consumer needs and preferences have been included in planning this project. Describe how consumers have had an opportunity to provide input into this specific project, and include in this section all petitions, letters of acknowledgement, support or opposition received.

(5) The most current version of Forms MO 580-2501, MO 580-2502, MO 580-2503, MO 580-2504, MO 580-2505, MO 580-1861, MO 580-1869 and MO 580-1863 may be obtained by mailing a written request to the Certificate of Need Program (CONP), 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than three hundred fifty-three thousand six hundred dollars (\$353,600) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

FISCAL NOTE
PRIVATE COST

I. 19 CSR 60-50.430

Title: 19 - DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division: 60 - Missouri Health Facilities Review Committee

Chapter: 50 - Certificate of Need Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 19 CSR 60-50.430 Application Package

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely to be affected by the addoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
50	Health care facilities	\$353,600

III. WORKSHEET

Based on the following assumptions and estimates, the Private Entity Cost associated with the Proposed Rule would be calculated as follows:

Letter of Intent	\$ 100
Develop Application	5,000
Copies of Application	900
Minimum Application Fee	<u>+ 1,000</u>
Total Application Cost	\$7,000
Annual Application Cost = 50 x \$7,000	= \$350,000
Annual Post Decision Cost	\$3,600
Proposed Rule Cost = \$350,000 + \$3,600	= \$353,600
TOTAL	\$353,600

IV. ASSUMPTIONS

Based on past experience, it is estimated that the proposed CON Rules will generat approximately 50 Certification of Need applications annually.

(a) It is assumed that the applicant will file a Letter of Intent which is normally two pages in length. Allowing \$50 per page for preparation, the cost would be approximately \$100.

(b) For applicants applying for a statutory exception or exemption, the Letter of Intent must be accompanied by a Proposed Expenditures form, schematic drawings, and a copy of the facility license. Allowing \$50 for preparation of the Proposed Expenditures form and \$50 for the schematic drawing.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSION

19 CSR 60-50.440 Criteria and Standards for Hospital and Freestanding Services. This rule listed the service-specific criteria and standards used in the Certificate of Need (CON) review process.

PURPOSE: *This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.*

AUTHORITY: *section 197.320, RSMo Supp. 1997. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.*

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**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program**

PROPOSED RULE

19 CSR 60-50.440 Criteria and Standards for Equipment and New Hospitals

PURPOSE: *This rule lists the service-specific criteria and standards used in the Certificate of Need (CON) review process.*

(1) For new units or services in the geographic service area, use the following methodologies:

(A) The population-based need formula should be (Unmet Need = $(S \times P) - U$) where:

P = Year 2005 population in the service area(s);

U = Number of service units in the geographic service area(s); and

S = Service-specific need rate of one (1) unit per population listed:

1. Magnetic resonance imaging unit	100,000
2. Positron emission tomography unit	500,000
3. Lithotripsy unit	1,000,000
4. Linear accelerator unit	100,000
5. Adult cardiac catheterization lab	50,000
6. Pediatric cardiac catheterization lab	50,000

7. Adult open heart surgery rooms	100,000
8. Pediatric open heart surgery rooms	100,000
9. All general surgery	10,000
10. Gamma knife	7,500,000
11. Excimer laser	500,000

(B) The minimum annual utilization for all other providers in the geographic service area should achieve at least the following rates:

1. Magnetic resonance imaging procedures	2,000
2. Positron emission tomography procedures	1,000
3. Lithotripsy treatments	1,000
4. Linear accelerator treatments	3,500
5. Adult cardiac catheterization procedures (include coronary angioplasties)	500
6. Pediatric cardiac catheterization procedures	250
7. Adult open heart surgery operations	200
8. Pediatric open heart surgery operations	100
9. All general surgery	750
10. Gamma knife treatments	200
11. Hemodialysis treatments	200
12. Excimer laser procedures	1,800

(C) Long-term care hospitals (such as a hospital-within-a-hospital or long-term acute care hospital) should comply with the standards as described in 42 CFR, section 412.23(e), and bed need requirements should meet the applicable population-based bed need and utilization standards in 19 CSR 60-50.450;

(D) Geographic service areas and alternate methodologies may be provided in addition to the fifteen (15)-mile radius calculation and should have substitute values for the population-based need formula.

(2) For additional units or services, the applicant's optimal annual utilization should achieve at least the following rates:

(A) Magnetic resonance imaging procedures	3,000
(B) Positron emission tomography procedures	1,000
(C) Lithotripsy treatments	1,000
(D) Linear accelerator treatments	6,000
(E) Adult cardiac catheterization procedures	750
(F) Pediatric cardiac catheterization procedures	375
(G) Adult open heart surgery operations	300
(H) Pediatric open heart surgery operations	150
(I) All other general surgery	1,125
(J) Gamma knife treatments	200
(K) Hemodialysis treatments	200
(L) Excimer laser procedures	3,600

(3) For replacement equipment, utilization standards are not used, but rather the following questions should be answered:

(A) What is the financial rationale for the replacement?

(B) How has the existing unit exceeded its useful life in accordance with American Hospital Association guidelines?

(C) How does the replacement unit affect quality of care compared to the existing unit?

(D) Is the existing unit in constant need of repair?

(E) Has the current lease on the existing unit expired?

(F) What technological advances will the new unit include?

(G) How will patient satisfaction be improved?

(H) How will the new unit improve outcomes and/or clinical improvements?

(I) What impact will the new unit have on utilization and operational efficiencies?

(J) How will the new unit add additional capabilities?

(K) By what percentage will this replacement increase patient charges?

(4) For the construction of a new hospital, the following questions should be answered:

(A) What methodology was utilized to determine the need for the proposed hospital?

(B) Provide evidence that the current occupancy of other hospitals in the proposed geographic service area exceeds eighty percent (80%).

(C) What impact would the proposed hospital have on utilization of other hospitals in the geographic service area?

(D) What is the unmet need according to the following population-based bed need formula using ($\text{Unmet Need} = (\text{S} \times \text{P}) - \text{U}$), where:

P = Year 2005 population in the geographic service area;
U = Number of beds in the geographic service area; and
S = Service-specific need rate of one (1) bed per population as follows:

1. Medical/surgical bed	570
2. Pediatric bed	8,330
3. Psychiatric bed	2,080
4. Substance abuse/chemical dependency bed	20,000
5. Inpatient rehabilitation bed	9,090
6. Obstetric bed	5,880

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSON

19 CSR 60-50.450 Criteria and Standards for Long-Term Care. This rule outlined the criteria and standards against which a project involving a long-term care facility would be evaluated in a Certificate of Need (CON) review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and

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Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.450 Criteria and Standards for Long-Term Care

PURPOSE: This rule outlines the criteria and standards against which a project involving a long-term care facility would be evaluated in a Certificate of Need (CON) review.

(1) All additional long-term care (LTC) beds in nursing homes, hospitals, and residential care facilities (RCF), and beds in long-term acute hospitals are subject to the LTC bed minimum occupancy requirements (MOR) pursuant to sections 197.317 and 197.318(1), RSMo, with certain exemptions and exceptions pursuant to sections 197.305(7) and 197.312, RSMo, and LTC bed expansions and replacements pursuant to sections 197.318.8 through 197.318.10, RSMo.

(2) The MOR for additional LTC beds pursuant to section 197.318.1, RSMo, shall be met if the average occupancy for all licensed and available LTC beds located within the county and within fifteen (15) miles of the proposed site exceeded ninety percent (90%) during at least each of the most recent four (4) consecutive calendar quarters at the time of application filing as reported in the Division of Health Standards and Licensure (DHSL), Department of Health and Senior Services, Quarterly Survey of Hospital and Nursing Home (or Residential Care Facility) Bed Utilization and certified through a written finding by the DHSL, in which case the following population-based bed need methodology shall be used to determine the maximum size of the need—

(A) Approval of additional intermediate care facility/skilled nursing facility (ICF/SNF) beds will be based on a service area need determined to be fifty-three (53) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of ICF/SNF beds shown in the Inventory of Hospital and Nursing Home ICF/SNF Beds as provided by the Certificate of Need Program (CONP) which includes licensed and Certificate of Need (CON)-approved beds; and

(B) Approval of additional RCF beds will be based on a service area need determined to be sixteen (16) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of RCF beds shown in the Inventory of Residential Care

Facility Beds as provided by the CONP which includes licensed and CON-approved beds.

(3) Replacement Chapter 198 beds qualify for an exception to the LTC bed MOR plus shortened information requirements and review time frames if an applicant proposes to—

(A) Relocate RCF beds within a six (6)-mile radius pursuant to section 197.318.8(4), RSMo;

(B) Replace one-half (1/2) of its licensed beds within a thirty (30)-mile radius pursuant to section 197.318.9, RSMo; or

(C) Replace a facility in its entirety within a fifteen (15)-mile radius pursuant to section 197.318.10, RSMo, under the following conditions:

1. The existing facility's beds shall be replaced at only one (1) site;

2. The existing facility and the proposed facility shall have the same owner(s), regardless of corporate structure; and

3. The owner(s) shall stipulate in writing that the existing facility's beds to be replaced will not be used later to provide long-term care services; or if the facility is operated under a lease, both the lessee and the owner of the existing facility shall stipulate the same in writing.

(4) LTC bed expansions involving a Chapter 198 facility qualify for an exception to the LTC bed MOR. In addition to the shortened information requirements and review time frames, applicants shall also submit the following information:

(A) If an effort to purchase has been successful pursuant to section 197.318.8(1), RSMo, a Purchase Agreement (Form MO 580-2352) between the selling and purchasing facilities, and a copy of the selling facility's reissued license verifying the surrender of the beds sold; or

(B) If an effort to purchase has been unsuccessful pursuant to section 197.318.8(1), RSMo, a Purchase Agreement (Form MO 580-2352) between the selling and purchasing facilities which documents the "effort(s) to purchase" LTC beds.

(5) An exception to the LTC bed MOR and CON application filing fee will be recognized for any proposed facility which is designed and operated exclusively for persons with acquired human immunodeficiency syndrome (AIDS).

(6) An exception to the LTC bed MOR will be recognized for a proposed LTC facility where at least ninety-five percent (95%) of the patients require kosher diets pursuant to section 197.318.5, RSMo.

(7) Any newly-licensed Chapter 198 facility established as a result of the Alzheimer's and dementia demonstration projects pursuant to Chapter 198, RSMo, or aging-in-place pilot projects pursuant to Chapter 198, RSMo, as implemented by the DHSL, may be licensed by the DHSL until the completion of each project. If a demonstration or pilot project receives a successful evaluation from the DHSL and a qualified Missouri school or university, and meets the DHSL standards for licensure, this will ensure continued licensure without a new CON.

(8) For LTC renovation or modernization projects which do not include increasing the number of beds, the applicant should document the following, if applicable:

(A) The proposed project is needed to comply with current facility code requirements of local, state or federal governments;

(B) The proposed project is needed to meet requirements for licensure, certification or accreditation, which if not undertaken, could result in a loss of accreditation or certification;

(C) Operational efficiencies will be attained through reconfiguration of space and functions;

(D) The methodologies used for determining need; and
(E) The rationale for the reallocation of space and functions.

(9) The most current version of Form MO 580-2352 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the form from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

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**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSON

19 CSR 60-50.460 Criteria and Standards for Other Health Services and Emerging Technology. This rule outlined the criteria and standards against which a project involving a modernization or renovation of a health care facility or a project involving new and emerging technology would be evaluated in a Certificate of Need (CON) review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1997. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.460 Criteria and Standards for Evolving Technology

PURPOSE: This rule outlines the criteria and standards against which a project involving new technology would be evaluated in a Certificate of Need (CON) review.

(1) For evolving technology not currently available in the state or not in general usage in the state, the following shall be documented:

- (A) The medical effects shall be described and documented in published scientific literature;
- (B) The degree to which the objectives of the technology have been met in practice;
- (C) Any side effects, contraindications or environmental exposures;
- (D) The relationships, if any, to existing preventive, diagnostic, therapeutic or management technologies and the effects on the existing technologies;
- (E) Food and Drug Administration approval;
- (F) The need methodology used by this proposal in order to assess efficacy and cost impact of the proposal; and
- (G) Explain the degree of partnership, if any, with other institutions for the joint use of and financing of the evolving technology.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

PROPOSED RESCISSION

19 CSR 60-50.470 Criteria and Standards for Financial Feasibility. This rule outlined the criteria and standards against which a project involving a health care facility would be evaluated relative to the financial feasibility of the project in a Certificate of Need (CON) review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1999. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective April 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.470 Criteria and Standards for Financial Feasibility

PURPOSE: This rule outlines the criteria and standards against which a project involving a health care facility would be evaluated relative to the financial feasibility of the project in a Certificate of Need (CON) review.

(1) Proposals for any new hospital, nursing home, or residential care facility construction must include documentation that the proposed costs per square foot are reasonable when compared to the latest "RS Means Construction Cost Data" available from Certificate of Need Program (CONP). Any proposal with costs in excess of the three-fourths (3/4) percentile must include justification for the higher costs.

(2) Document that sufficient financing will be available to assure completion of the project by providing a letter from a financial

institution saying it is willing to finance the project, or an auditor's statement that unrestricted funds are available for the project.

(3) Document financial feasibility by including:

(A) The Service-Specific Revenues and Expenses (Form MO 580-1865) for each revenue generating service affected by the project for the past three (3) years projected through three (3) years beyond project completion;

(B) The Detailed Institutional Cash Flows (Form MO 580-1866) for the past three (3) years projected through three (3) years beyond project completion; and

(C) For existing services, a copy of the latest available audited financial statements or the most recent Internal Revenue Service (IRS) 990 Form or similar IRS filing for facilities not having individual audited financial statements.

(4) Show how the proposed service will be affordable to the population in the proposed service area:

(A) Document how the proposal would impact current patient charges, and disclose the method for deriving charges for this service, including both direct and indirect components of the charge; and

(B) Demonstrate that the proposed service will be responsive to the needs of the medically indigent through such mechanisms as fee waivers, reduced charges, sliding fee scales or structured payments.

(5) The most current version of Forms MO 580-1865 and MO 580-1866 may be obtained by mailing a written request to the Certificate of Need Program (CONP), 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective April 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSON

19 CSR 60-50.480 Criteria and Standards for Alternatives.
This rule outlined the criteria and standards for alternatives con-

sidered to a project involving a health care facility in order to determine cost effectiveness in a Certificate of Need (CON) review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1997. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSON

19 CSR 60-50.500 Additional Information. This rule described the process for submitting additional information and for requesting a public hearing on Certificate of Need (CON) applications in the CON review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate

of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.500 Additional Information

PURPOSE: This rule describes the process for submitting additional information and for requesting a public hearing on Certificate of Need (CON) applications in the CON review process.

(1) Additional information requested by the Missouri Health Facilities Review Committee (committee) shall be submitted within the time frame specified by the committee.

(2) If an application is determined to be incomplete, the applicant shall be notified within fifteen (15) calendar days after filing (five (5) working days in the case of an expedited application). The applicant's written response shall be received within fifteen (15) calendar days after receipt of notification.

(3) Information submitted by interested parties should be received at the committee's principal office at least thirty (30) calendar days before the scheduled meeting of the committee.

(4) Copies of any additional information sent directly to the committee by applicants or interested parties should also be sent to the Certificate of Need Program (CONP) for file copies.

(5) When a request in writing is filed by any affected person within thirty (30) calendar days from the date of publication of the Application Review Schedule, the committee or CONP staff shall hold a public hearing on any application under the following conditions:

(A) The hearing may be conducted in the city of the proposed project if monetarily feasible;

(B) The CONP staff will present the introductions and orientation for the public hearing;

(C) The applicant may have up to fifteen (15) minutes for an applicant presentation at the public hearing;

(D) Any person may present written testimony and up to five (5) minutes of verbal testimony at the public hearing; and

(E) The testimony shall become a part of the record of the review.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director,

Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

PROPOSED RESCISSON

19 CSR 60-50.600 Certificate of Need Decisions. This rule described the process for making decisions on Certificate of Need (CON) applications in the CON review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.600 Certificate of Need Decisions

PURPOSE: This rule describes the process for making decisions on Certificate of Need (CON) applications in the CON review process.

(1) Decisions on full Certificate of Need (CON) applications and contested expedited applications shall be subject to the following:

(A) Parliamentary procedures for all meetings shall follow *Robert's Rules of Order*, newly revised 1990 edition, 9th edition.

(B) The Certificate of Need Program's analysis becomes the findings of fact for the Missouri Health Facilities Review

Committee (committee) decision except to the extent that it is expressly rejected, amended or replaced by the committee in which case the minutes of the committee will contain the changes and become the amended findings of fact of the committee. The committee's final vote becomes conclusion of law.

(C) A final decision is rendered on any application after each committee member present is given the opportunity to vote and the chair announces the passage or defeat of the motion on the floor. The chair or acting chair shall vote only in case of a tie.

(2) Decisions on expedited CON applications shall be subject to the following:

(A) In the case of qualifying expedited review applications, committee members will receive a ballot in addition to the written analysis. Members may vote either to approve the application or to have it placed on the next formal meeting agenda for consideration.

(B) Ballots may be returned to the CON office by either mail, e-mail, or fax, but must be received within ten (10) days from the date they were mailed to committee members.

(C) A final decision to approve the application will be rendered if all ballots received by the cut-off date (a majority is required) signifying a vote to approve the project. If the vote is not unanimous, the application will be subject to the provisions of section (1) of this rule.

(3) The committee shall make a decision on an application within one hundred thirty (130) calendar days after the date the application is filed, and subsequently notify the applicant by providing either a legal certificate or denial letter.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

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**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSON

19 CSR 60-50.700 Post-Decision Activity. This rule described the procedure for filing Periodic Progress Reports after approval of Certificate of Need (CON) applications, CONs subject to forfeiture, and the procedure for requesting a cost overrun.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1999. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective April 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

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NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program**

PROPOSED RULE

19 CSR 60-50.700 Post-Decision Activity

PURPOSE: This rule describes the procedure for filing Periodic Progress Reports after approval of Certificate of Need (CON) applications, CONs subject to forfeiture, and the procedure for requesting a cost overrun.

(1) Applicants who have been granted a Certificate of Need (CON) shall file reports with the Missouri Health Facilities Review Committee (committee), using Periodic Progress Report (Form MO 580-1871). The reports shall be filed by the end of each six (6)-month period from CON approval until project construction and/or expenditures are complete. All Periodic Progress Reports must contain a complete and accurate accounting of all expenditures for the report period.

(2) Applicants who fail to incur a capital expenditure within six (6) months may request an extension of six (6) months by submitting a letter to the committee outlining the reasons for the failure, with a listing of the actions to be taken within the requested extension period to insure compliance; the Certificate of Need Program (CONP) staff on behalf of the committee will analyze the request and grant an extension, if appropriate. Applicants who request additional extensions must provide additional financial information or other information, if requested by the CONP staff.

(3) A CON shall be subject to forfeiture for failure to—

(A) Incur a project-specific capital expenditure within twelve (12) months after the date the CON was issued through initiation of project aboveground construction or lease/purchase of the proposed

equipment since a capital expenditure, according to generally accepted accounting principles, must be applied to a capital asset; or

(B) File the required Periodic Progress Report.

(4) If the CONP finds that a CON may be subject to forfeiture—

(A) Not less than thirty (30) calendar days prior to a committee meeting, the CONP shall notify the applicant in writing of the possible forfeiture, the reasons for it, and its placement on the committee agenda for action; and

(B) After receipt of the notice of possible forfeiture, the applicant may submit information to the committee within ten (10) calendar days to show compliance with this rule or other good cause as to why the CON shall not be forfeited.

(5) If the committee forfeits a CON, CONP staff shall notify all affected state agencies of this action.

(6) Cost overrun review procedures implement the CON statute section 197.315.7, RSMo. Immediately upon discovery that a project's actual costs would exceed approved project costs by more than ten percent (10%), an applicant shall apply for approval of the cost variance. A nonrefundable fee in the amount of one-tenth of one percent (0.1%) of the additional project cost above the approved amount made payable to "Missouri Health Facilities Review Committee" shall be required. The original and eleven (11) copies of the information requirements for a cost overrun review are required as follows:

(A) Amount and justification for cost overrun shall document—

1. Why and how the approved project costs would be exceeded, including a detailed listing of the areas involved;

2. Any changes that have occurred in the scope of the project as originally approved; and

3. The alternatives to incurring this overrun that were considered and why this particular approach was selected.

(B) Provide a Proposed Project Budget (Form MO 580-1863).

(7) At any time during the process from Letter of Intent to project completion, the applicant is responsible for notifying the committee of any change in the designated contact person. If a change is necessary, the applicant must file a Contact Person Correction (Form MO 580-1870).

(8) The most current version of Forms MO 580-1871, MO 580-1863, and MO 580-1870 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective April 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson

City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program

PROPOSED RESCISSON

19 CSR 60-50.800 Meeting Procedures. This rule described the meeting format and protocol in a Certificate of Need (CON) review meeting.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

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NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.800 Meeting Procedures

PURPOSE: This rule describes the meeting format and protocol in a Certificate of Need (CON) review meeting.

(1) The regular meetings of the Missouri Health Facilities Review Committee (committee) to consider Certificate of Need (CON) applications shall be held approximately every eight (8) weeks according to a schedule adopted by the committee before the beginning of each calendar year and modified periodically to reflect changes. A copy of this calendar may be obtained from the CON Program (CONP) staff.

(2) The original and eleven (11) copies of all new information not previously in the application or requests for the addition of agen-

da items shall be received by the CONP staff at least thirty (30) calendar days before the scheduled meeting with one (1) exception. An applicant shall have no less than fifteen (15) days to respond to the findings of the staff and adverse information received from other parties. An applicant should respond in writing to an inquiry from a committee member at any time, and the response shall be provided to the committee for consideration.

(3) Any committee member may request that an item be added to the agenda up to forty-eight (48) hours before the scheduled meeting, exclusive of weekends and holidays when the principal office is closed.

(4) The tentative agenda for each committee meeting shall be released at least twenty (20) calendar days before each meeting.

(5) The committee may give the applicant and interested parties an opportunity to make brief presentations at the meeting according to the Missouri Health Facilities Review Committee Meeting Format and Missouri Health Facilities Review Committee Meeting Protocol. The applicant and interested parties shall conform to the following procedures:

(A) The applicant's presentation shall be a key points summary based on the written application and shall not exceed ten (10) minutes inclusive of all presenters with five (5) minutes additional time for summation;

(B) Others in support or opposition to the applicant's project (such as political representatives, citizens of the community and other providers) shall be categorized as unrelated parties and shall appear after the applicant's presentation;

(C) Regardless of the number of presenters involved in the presentation, individual presentations by unrelated parties in support of, neutral, or in opposition to the applicant's project shall not exceed three (3) minutes each;

(D) No new material shall be introduced with the exception of materials or information provided in response to the CONP staff or at the request of a committee member;

(E) Rebuttals by applicants of presentations by interested parties are generally allowed;

(F) All presenters shall complete and sign a Representative Registration (Form MO 580-1869) and give it to the sign-in coordinator prior to speaking;

(G) The reserved area in the hearing room may be used by an applicant only during the applicant's presentation and then vacated for the next group (individuals waiting to present shall remain clear of the podium and staff area until specifically called by the chairman); and

(H) Prescribed time limits shall be monitored by the timekeeper, and presenters shall observe the timekeeper's indications of lapsed time to ensure that each presenter has an opportunity to present within the allotted time.

(6) Additional meetings of the committee may be held periodically. These meetings may include educational workshops for members to gain knowledge, meetings with organizations for cooperative purposes, discussion of rules, seeking legal advice from counsel, and other issues.

(7) The most current version of Form MO 580-1869 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the form from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSON

19 CSR 60-50.900 Administration. This rule described the duties and responsibilities of the Certificate of Need (CON) Program staff.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RULE

19 CSR 60-50.900 Administration

PURPOSE: This rule describes the duties and responsibilities of the Certificate of Need (CON) Program staff.

- (1) The role of the Missouri Health Facilities Review Committee (committee) includes the following:
- (A) Make specific decisions about applications, applicability and administrative matters;
 - (B) Make policy decisions to include the development of rules; and
 - (C) Oversee operations of the Certificate of Need Program (CONP) staff.
- (2) The role of the CONP staff includes the following:
- (A) Act as an agent of the committee; and
 - (B) Perform administrative tasks.
- (3) The CONP staff shall be staffed as follows:
- (A) The committee shall employ a CONP director and additional staff to perform the duties assigned to it by law;
 - (B) The committee shall designate the CONP director, or his/her designee, to perform any administrative functions that may be required of the committee by law; and
 - (C) The CONP staff shall be housed at the principal office of the committee.
- (4) The committee shall maintain its principal office in Jefferson City where the CONP staff will:
- (A) Accept letters of intent, applications and any other written communication related to the conduct of the CONP;
 - (B) Accept service of legal process;
 - (C) Maintain its records; and
 - (D) Post all notices required by law.
- (5) The CONP staff shall provide technical assistance to potential applicants.
- (6) The committee and CONP staff shall publish quarterly reports containing the status of reviews being conducted, the reviews completed since the last report, and the decisions made, plus an annual summary of activities for the past calendar year.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 20—DEPARTMENT OF INSURANCE Division 10—General Administration Chapter 1—Organization

PROPOSED AMENDMENT

20 CSR 10-1.020 Interpretation of Referenced or Adopted Material. The department is amending section (1).

PURPOSE: The purpose of this amendment is to update the materials cross-referenced in other rules of the Department of Insurance by incorporating by reference material published after June 30, 2000, and before July 1, 2001.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) The versions of the following materials published as of June 30, 2000, are incorporated by reference in the rules of the Department of Insurance under this title:

(B) National Association of Insurance Commissioners (NAIC) publications, as follows:

1. Accounting Practices and Procedures Manual;
2. Annual Statement Instructions;
3. Valuation of Securities;
4. Examiner's Handbook;
5. NAIC Proceedings 1984, Volume I; and
6. NAIC uniform biographical data forms;

AUTHORITY: section 374.045, RSMo 2000. Original rule filed Nov. 24, 1992, effective Aug. 9, 1993. Amended: Filed Oct. 1, 1993, effective May 9, 1994. Amended: Filed Sept. 29, 1995, effective May 30, 1996. Amended: Filed Sept. 12, 1996, effective April 30, 1997. Amended: Filed April 23, 1999, effective Nov. 30, 1999. Amended: Filed Dec. 14, 2000, effective July 30, 2001. Amended: Filed Dec. 14, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on February 20, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on February 20, 2002. Written statements shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 526-4636 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE Division 200—Financial Examination Chapter 1—Financial Solvency and Accounting Standards

PROPOSED AMENDMENT

20 CSR 200-1.020 Accounting Standards and Principles. The department is amending section (1) and adding section (3).

PURPOSE: The proposed amendment will correct a cross-reference to a statute that has been repealed and makes mandatory the current standard of accounting practices of health maintenance organizations in statements made to the Department of Insurance.

(1) Each insurance company shall make and file statements of its assets, liabilities, capital and surplus, income and expenses, including all schedules and exhibits used in connection with such statements, which statements the director may use to determine whether the capital stock or guarantee fund of an insurance company is impaired under section 375.560.1(1), RSMo, whether an insurance company is insolvent under section 375.560.1(2) or 375.881.1(1), RSMo, whether an insurance company is in a financial condition that its further transaction of business would be hazardous under section 375.560.1(5) or 375.881.1(3), RSMo or 375.1165(1), RSMo and whether an insurance company fails to comply with the requirements for admission under section 375.881.1(2), RSMo according to the applicable accounting guidance, standards, and principles approved by the National Association of Insurance Commissioners (NAIC), published in the *Accounting Practice and Procedures Manual, Annual Statement Instructions, Valuation of Securities and Examiner's Handbook*, except where the applicable provisions of Chapters 374-385, RSMo or other specific rules expressly provide otherwise.

(3) Each health maintenance organization shall make and file statements of its assets, liabilities, capital and surplus, income and expenses, including all schedules and exhibits used in connection with such statements, which statements the director may use to determine whether a health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees under section 354.470.1(4), RSMo, whether the continued operation of a health maintenance organization would be hazardous to its enrollees under section 354.470.1(8), RSMo, whether a health maintenance organization is insolvent under section 375.1175(2), RSMo, and whether a health maintenance organization is in a financial condition that its further transaction of business would be hazardous under section 375.1165(1), RSMo, according to the applicable accounting guidance, standards, and principles approved by the National Association of Insurance Commissioners (NAIC), published in the *Accounting Practices and Procedures Manual, Annual Statement Instructions, Valuation of Securities and Examiner's Handbook*, except where the applicable provisions of Chapter 354, RSMo or other specific rules expressly provide otherwise.

AUTHORITY: sections 354.120, 354.485, and 374.045, RSMo 2000. This rule was previously filed as 4 CSR 190-II.230. Original rule filed Feb. 3, 1989, effective May 1, 1989. Amended: Filed Aug. 25, 1989, effective Jan. 1, 1990. Amended: Filed Dec. 14, 2000, effective July 30, 2001. Amended: Filed Dec. 4, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on February 20, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on February 20, 2002. Written statements

shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 526-4636 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 11—Control and Management of Insurance Companies

PROPOSED RULE

20 CSR 200-11.130 Materiality, Fairness and Reasonableness of Certain Affiliated Transactions

PURPOSE: The purpose of this rule is to carry out the provisions of section 382.190, RSMo 2000. Specifically, this rule provides the standards by which the director will determine whether a transaction is material for purposes of section 382.190(1) and (2), RSMo, whether the terms of material transactions between a registered insurer and its affiliates are "fair and reasonable" for purposes of section 382.190(1), RSMo, and whether charges or fees for services are "reasonable" for purposes of section 382.190(2), RSMo.

(1) A transaction is a "material transaction" for purposes of section 382.190(1) and (2), RSMo, if:

(A) It involves a registered insurer and one (1) or more of its affiliates; and

(B) Such transaction:

1. Involves more than one-half of one percent (0.5%) of such insurer's admitted assets as of the thirty-first day of December next preceding the transaction; or

2. Is part of a plan or series of like transactions with persons within the same holding company system as such insurer and the purpose of such transactions is to avoid the threshold established in paragraph 1 of subsection (B) of this section and thus avoid the review that would otherwise occur.

(2) A transaction which is not a material transaction need not comply with the standards set forth in section 382.190(1) and (2), RSMo.

(3) Standards for charges, fees and other consideration:

(A) For services.

1. The charges, fees or other consideration, paid by the registered insurer to an affiliate for a service shall not exceed the direct cost to the registered insurer. "Direct cost" means the expenses and costs to the registered insurer of directly performing substantially the same service for itself. The direct cost shall be determined by consistently applied, objectively verifiable, generally recognized, internal accounting practices.

2. If and only if the registered insurer cannot determine its direct cost, the charge or fee paid by the registered insurer to an affiliate for a service shall not exceed the cost of obtaining substantially the same service on the open market. A service is obtained on the open market where the service is obtainable from a person:

A. Who is not affiliated with the insurer; and

B. Either:

(I) Whose cost to the insurer represents the lowest and best bid for such service, such bid having been submitted in response to a request for proposal in a competitive bidding process approved by the director; or

(II) Whose cost to the insurer represents a price that is, with respect to substantially the same service:

- (a) Typical of the price paid by other non-affiliated persons; and
- (b) Available to the general public; and
- (c) Known to the general public.

(B) For assets or goods. The charges, fees or other consideration, paid by the registered insurer to an affiliate for an asset or good shall not exceed the cost of obtaining substantially the same asset or good on the open market. An asset or good is obtained on the open market where the service is obtainable from a person:

1. Who is not affiliated with the insurer; and
2. Either:

A. Whose cost to the insurer represents the lowest and best bid for such asset or good, such bid having been submitted in response to a request for proposal in a competitive bidding process approved by the director; or

B. Whose cost to the insurer represents a price that is, with respect to substantially the same asset or good:

(I) Typical of the price paid by other non-affiliated persons; and

- (II) Available to the general public; and
- (III) Known to the general public.

(4) The director shall presume that a material transaction is fair and reasonable, if such material transaction complies with the standards set forth in section (3) of this rule. The director shall presume that a material transaction is neither fair nor reasonable, if such material transaction does not comply with the standards set forth in section (3) of this rule. Any person may seek during the appropriate administrative proceeding (e.g., a Form D or an examination) to rebut a presumption created by this section, but evidence relating to whether a transaction is fair or reasonable will be viewed with a bias in favor of the applicable presumption.

AUTHORITY: sections 374.045 and 382.240, RSMo 2000. Original rule filed Dec. 4, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on February 20, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on February 20, 2002. Written statements shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 526-4636 at least five (5) working days prior to the hearing.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN

Division 10—Health Care Plan

Chapter 2—Plan Options

PROPOSED AMENDMENT

22 CSR 10-2.010 Definitions. The board is amending subsection (1)(O).

PURPOSE: The amendment includes changes in the definitions made by the board of trustees regarding the key terms within the Missouri Consolidated Health Care Plan.

(1) When used in this plan document, these words and phrases have the meaning—

(O) Eligibility date—Refer to 22 CSR 10-2.020 for effective date provisions.

1. Newly-hired employees and their eligible dependents, or employees rehired after their participation terminates and their eligible dependents, are eligible to participate in the plan on the first day of the month following the employee's date of employment or reemployment.

2. Employees transferred from a department or other public entity with coverage under another medical care plan into a department or other public entity covered by this plan and their eligible dependents who were covered by the other medical care plan will be eligible for participation /immediately/ **subject to the provisions of 22 CSR 10-2.060(1)(Q).**

3. Employees who terminate all employment with the state (not simply move from one agency to another) and are rehired as a new state employee before termination of participation, and their eligible dependents who were covered by the PPO plan, will be eligible for participation immediately.

4. Employees who terminate all employment with the state (not simply move from one agency to another) and are rehired as a new state employee in the subsequent month, and their eligible dependents who were covered by the PPO plan, will be eligible for participation retroactive to the date following termination of participation;

*AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. Amended: Filed Dec. 17, 2001.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN

Division 10—Health Care Plan

Chapter 2—Plan Options

PROPOSED AMENDMENT

22 CSR 10-2.040 PPO Plan Summary of Medical Benefits. The board is amending the section (9).

PURPOSE: The amendment includes changes made by the board of trustees regarding medical benefits for participants in the Missouri Consolidated Health Care Plan PPO Plan.

(9) Prescription Drug Program—The PPO plan provides coverage for *maintenance and non-maintenance medications, prescription drugs* as described in the following:

(A) Medications.

1. In-Network.

A. *[Five dollar (\$5)] Ten dollar (\$10)* co-pay for thirty (30)-day supply for generic drug on the formulary.

B. *[Fifteen dollars (\$15)] Twenty dollar (\$20)* co-pay for thirty (30)-day supply for brand drug on the formulary.

C. *[Twenty-five dollar (\$25)] Thirty-five dollar (\$35)* co-pay for thirty (30)-day supply for non-formulary drug.

2. *[Non-Network — The deductible will apply. After satisfaction of the deductible, claims will be paid at fifty percent (50%) coinsurance. Charges will not be applied to the out-of-pocket maximum.] Prescriptions filled with a brand drug when a generic is available will be subject to the generic co-payment amount and the member must also pay the difference in the cost between the generic and brand drugs.*

3. Mail Order Program—Prescriptions may be filled through mail order program for up to a ninety (90)-day supply for twice the regular co-payment *[for a drug on the maintenance list]*.

(B) Non-Network Pharmacies—if a member chooses to use a non-network pharmacy, s/he will be required to pay the full cost of the prescription, then file a claim with the prescription drug administrator. S/he will be reimbursed the amount that would have been allowed at an in-network pharmacy, less any applicable *[deductibles or coinsurance] co-payment*. Any difference between the amount paid by the member at a non-network pharmacy and the amount that would have been allowed at an in-network pharmacy will not be applied to the out-of-pocket maximum.

AUTHORITY. section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: There is a potential for some individual state members to incur additional costs in excess of five hundred dollars five hundred dollars (\$500) due to the changes in some of the co-payment levels for pharmacy services. However, it is impossible to accurately estimate the number of persons this would impact or the associated costs because it will be dependent upon the amount and type of individual health care needs that arise during this year. Additionally, higher co-payments could be offset in some cases if members switch to generic drugs when possible.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST****I. RULE NUMBER**

Title: 22 – Missouri Consolidated Health Care Plan

Chapter: Chapter 10

Type of Rulemaking: Proposed Amendment to Rule

Rule Number and Name: 2.040 PPO Plan Summary of Medical Benefits

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Percentage using pharmacy of the 5,231 members	Individuals enrolled in the MCHCP in the PPO	\$332,000

III. WORKSHEET

The cost for pharmacy in the health benefit plan has been increasing at a far greater rate than any other benefit. Consequently, the plan design for many programs is being modified to counter an increase in the cost and utilization in this area.

The MCHCP will be implementing a revised three-tiered benefit design. Under this arrangement, the member will pay the following:

\$10 for a generic prescription on the formulary
\$20 for a brand prescription on the formulary
\$35 for a non-formulary drug

If the member uses a brand prescription when a generic was available, s/he will have to pay the generic co-payment plus the difference in the cost of the two drugs.

The current benefit design for the PPO is:

\$5 for a generic prescription on the formulary
\$15 for a brand prescription on the formulary
\$25 for a non-formulary drug

IV. ASSUMPTIONS

It is estimated that the change in coverage for this benefit will cost all state members approximately a total \$6.635 million. This is based upon current utilization patterns and the resulting actuarial projections for next year using the revised plan design. Consequently, it is estimated that the portion attributable to PPO members is \$332,000.

**Title 22—MISSOURI CONSOLIDATED HEALTH
CARE PLAN**
Division 10—Health Care Plan
Chapter 2—Plan Options

PROPOSED AMENDMENT

22 CSR 10-2.045 Co-Pay Plan Summary of Medical Benefits.
The board is amending section (9).

PURPOSE: *The amendment includes changes made by the board of trustees regarding medical benefits for participants in the Missouri Consolidated Health Care Plan Co-Pay Plan.*

(9) Prescription Drug Program—The co-pay plan provides coverage for *maintenance and non-maintenance medications, J prescription drugs* as described in the following:

(A) Medications.

1. In-Network.

A. Ten dollar (\$10) co-pay for thirty (30)-day supply for generic drug on the formulary.

B. *Fifteen dollar (\$15)* Twenty dollar (\$20) co-pay for thirty (30)-day supply for brand drug on the formulary.

C. *Twenty-five dollar (\$25)* Thirty-five dollar (\$35) co-pay for thirty (30)-day supply for non-formulary drug.

2. *Non-Network—The deductible will apply. After satisfaction of the deductible, claims will be paid at fifty percent (50%) coinsurance. Charges will not be applied to the out-of-pocket maximum.* Prescriptions filled with a brand drug when a generic is available will be subject to the generic co-payment amount and the member must also pay the difference in the cost between the generic and brand drugs.

3. Mail Order Program—Prescriptions may be filled through a mail order program for up to a ninety (90)-day supply for twice the regular co-payment *[for a drug on the maintenance list]*.

(B) Non-Network Pharmacies—if a member chooses to use a non-network pharmacy, s/he will be required to pay the full cost of the prescription, then file a claim with the prescription drug administrator. S/he will be reimbursed the amount that would have been allowed at an in-network pharmacy, less any applicable *[deductibles or coinsurance] co-payment*. Any difference between the amount paid by the member at a non-network pharmacy and the amount that would have been allowed at an in-network pharmacy will not be applied to the out-of-pocket maximum.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 12, 2000, effective Jan. 1, 2001, expired June 29, 2001. Original rule filed Dec. 12, 2000, effective June 30, 2001. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: There is a potential for some individual state members to incur additional costs in excess of five hundred dollars (\$500) due to the changes in some of the co-payment levels for pharmacy services. However, it is impossible to accurately estimate the number of persons this would impact or the associated costs because it will be dependent upon the amount and type of individual health care needs that arise during this year. Additionally, higher co-payments could be offset in some cases if members switch to generic drugs when possible.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, PO Box

104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST****V. RULE NUMBER**

Title: 22 – Missouri Consolidated Health Care Plan

Chapter: Chapter 10

Type of Rulemaking: Proposed Amendment to Rule

Rule Number and Name: 2.045 Co-pay Plan Summary of Medical Benefits

VI. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Percentage using pharmacy of the 8,270 members	Individuals enrolled in the MCHCP in the Co-pay Plan	\$519,000

VII. WORKSHEET

The cost for pharmacy in the health benefit plan has been increasing at a far greater rate than any other benefit. Consequently, the plan design for many programs is being modified to counter an increase in the cost and utilization in this area.

The MCHCP will be implementing a revised three-tiered benefit design. Under this arrangement, the member will pay the following:

\$10 for a generic prescription on the formulary
\$20 for a brand prescription on the formulary
\$35 for a non-formulary drug

If the member uses a brand prescription when a generic was available, s/he will have to pay the generic co-payment plus the difference in the cost of the two drugs.

The current benefit design for the Co-pay Plan is:

\$10 for a generic prescription on the formulary
\$15 for a brand prescription on the formulary
\$25 for a non-formulary drug

VIII. ASSUMPTIONS

It is estimated that the change in coverage for this benefit will cost all state members approximately a total \$6.635 million. This is based upon current utilization patterns and the resulting actuarial projections for next year using the revised plan design. Consequently, it is estimated that the portion attributable to Co-pay Plan members is \$519,000.

**Title 22—MISSOURI CONSOLIDATED HEALTH
CARE PLAN**
Division 10—Health Care Plan
Chapter 2—Plan Options

PROPOSED AMENDMENT

22 CSR 10-2.055 Co-Pay Plan Benefit Provisions and Covered Charges. The board is amending subsection (1)(BB).

PURPOSE: This amendment includes changes made by the board of trustees regarding benefit provisions and covered charges in the Missouri Consolidated Health Care Plan Co-Pay Plan.

(1) **Covered Charges.**

(BB) Prescription Drugs—Insulin, syringes, test strips and glucometers are included in this coverage. There is no out-of-pocket maximum. Member is responsible only for the lesser of the applicable co-payment or the cost of the drug.

1. Ten dollar (\$10) co-pay for thirty (30)-day supply for generic drug on the formulary.
2. *[Fifteen dollar (\$15)] Twenty dollar (\$20)* co-pay for thirty (30)-day supply for brand drug on the formulary.
3. *[Twenty-five dollar (\$25)] Thirty-five dollar (\$35)* co-pay for thirty (30)-day supply for non-formulary drug.
4. Ninety (90)-day supply of *[maintenance]* medication for two (2) co-payments (mail order only).

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 12, 2000, effective Jan. 1, 2001, expired June 29, 2001. Original rule filed Dec. 12, 2000, effective June 30, 2001. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: There is a potential for some individual state members to incur additional costs in excess of five hundred dollars (\$500) due to the changes in some of the co-payment levels for pharmacy services. However, it is impossible to accurately estimate the number of persons this would impact or the associated costs because it will be dependent upon the amount and type of individual health care needs that arise during this year. Additionally, higher co-payments could be offset in some cases if members switch to generic drugs when possible.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST****IX. RULE NUMBER**

Title: 22 – Missouri Consolidated Health Care Plan

Chapter: Chapter 10

Type of Rulemaking: Proposed Amendment to Rule

Rule Number and Name: 2.055 Co-pay Plan Benefit Provisions and Covered Charges

X. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Percentage using pharmacy of the 8,270 members	Individuals enrolled in the MCHCP in the Co-pay Plan	\$519,000

XI. WORKSHEET

The cost for pharmacy in the health benefit plan has been increasing at a far greater rate than any other benefit. Consequently, the plan design for many programs is being modified to counter an increase in the cost and utilization in this area.

The MCHCP will be implementing a revised three-tiered benefit design. Under this arrangement, the member will pay the following:

\$10 for a generic prescription on the formulary
\$20 for a brand prescription on the formulary
\$35 for a non-formulary drug

If the member uses a brand prescription when a generic was available, s/he will have to pay the generic co-payment plus the difference in the cost of the two drugs.

The current benefit design for the Co-pay Plan is:

\$10 for a generic prescription on the formulary
\$15 for a brand prescription on the formulary
\$25 for a non-formulary drug

XII. ASSUMPTIONS

It is estimated that the change in coverage for this benefit will cost all state members approximately a total \$6.635 million. This is based upon current utilization patterns and the resulting actuarial projections for next year using the revised plan design. Consequently, it is estimated that the portion attributable to Co-pay Plan members is \$519,000.

**Title 22—MISSOURI CONSOLIDATED HEALTH
CARE PLAN**
Division 10—Health Care Plan
Chapter 2—Plan Options

PROPOSED AMENDMENT

22 CSR 10-2.063 HMO/POS Premium Option Summary of Medical Benefits. The board is amending subsections (1)(X) and (1)(AA).

PURPOSE: *The amendment includes changes made by the board of trustees regarding the medical benefits of the HMO/POS Premium Option in the Missouri Consolidated Health Care Plan.*

(1) **Covered Charges.**

(X) Physical Therapy and Rehabilitation Services—Five dollar (\$5) co-payment per visit for outpatient therapy. Limited to sixty (60) visits per incident. Additional visits *subject to medical review/ may be allowed if showing significant improvement and recommended by case management.*

(AA) Prescription Drugs—Insulin, syringes, test strips and glucometers are included in this coverage. There is no out-of-pocket maximum. Member is responsible only for the lesser of the applicable co-payment or the cost of the drug.

1. */Five dollar (\$5)/ ten dollar (\$10)* co-pay for thirty (30)-day supply for generic drug on the formulary.

2. */Fifteen dollar (\$15)/ Twenty dollar (\$20)* co-pay for thirty (30)-day supply for brand drug on the formulary.

3. */Twenty-five dollar (\$25)/ Thirty-five dollar (\$35)* co-pay for thirty (30)-day supply for non-formulary drug.

4. Ninety (90)-day supply of */maintenance/* medication for two (2) co-payments through mail order.

5. **Prescriptions filled with a brand drug when a generic is available will be subject to the generic co-payment amount and the member must also pay the difference in cost between the generic and brand drugs.**

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: There is a potential for some individual state members to incur additional costs in excess of five hundred dollars (\$500) due to the changes in some of the co-payment levels for pharmacy services. However, it is impossible to accurately estimate the number of persons this would impact or the associated costs because it will be dependent upon the amount and type of individual health care needs that arise during this year. Additionally, higher co-payments could be offset in some cases if members switch to generic drugs when possible.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST****XIII. RULE NUMBER**

Title: 22 – Missouri Consolidated Health Care Plan

Chapter: Chapter 10

Type of Rulemaking: Proposed Amendment to Rule

Rule Number and Name: 2.063 HMO/POS Premium Option Summary of Medical Benefits

XIV. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Percentage using pharmacy of the 56,993 members	Individuals enrolled in the MCHCP in an HMO/POS in the Premium option	\$3.583 million

XV. WORKSHEET

The cost for pharmacy in the health benefit plan has been increasing at a far greater rate than any other benefit. Consequently, the plan design for many programs is being modified to counter an increase in the cost and utilization in this area.

The MCHCP will be implementing a revised three-tiered benefit design. Under this arrangement, the member will pay the following:

\$10 for a generic prescription on the formulary
\$20 for a brand prescription on the formulary
\$35 for a non-formulary drug

If the member uses a brand prescription when a generic was available, s/he will have to pay the generic co-payment plus the difference in the cost of the two drugs.

The current benefit design for the Premium option is:

\$5 for a generic prescription on the formulary
\$15 for a brand prescription on the formulary
\$25 for a non-formulary drug

XVI. ASSUMPTIONS

It is estimated that the change in coverage for this benefit will cost all state members approximately a total \$6.635 million. This is based upon current utilization patterns and the resulting actuarial projections for next year using the revised plan design. Consequently, it is estimated that the portion attributable to HMO/POS Premium option members is \$3.583 million.

**Title 22—MISSOURI CONSOLIDATED HEALTH
CARE PLAN**
Division 10—Health Care Plan
Chapter 2—Plan Options

PROPOSED AMENDMENT

22 CSR 10-2.064 HMO/POS Standard Option Summary of Medical Benefits. The board is amending subsections (1)(X) and (1)(AA).

PURPOSE: *This amendment includes changes made by the board of trustees regarding the medical benefits of the HMO/POS Standard Option in the Missouri Consolidated Health Care Plan.*

(1) Covered Charges.

(X) Physical Therapy and Rehabilitation Services—Ten dollar (\$10) co-payment per visit for outpatient therapy. Limited to sixty (60) visits per incident. Additional visits */are subject to medical review/ may be allowed if showing significant improvement and recommended by case management.*

(AA) Prescription Drugs—Insulin, syringes, test strips and glucometers are included in this coverage. There is no out-of-pocket maximum. Member is responsible only for the lesser of the applicable co-payment or the cost of the drug.

1. Ten dollar (\$10) co-pay for thirty (30)-day supply for generic drug on the formulary.

2. Twenty dollar (\$20) co-pay for thirty (30)-day supply for brand drug on the formulary.

3. *[Thirty dollar (\$30)] Thirty-five dollar \$35* co-pay for thirty (30)-day supply for non-formulary drug.

4. Ninety (90)-day supply of *[maintenance]* medication for two (2) co-payments.

5. Prescriptions filled with a brand drug when a generic is available will be subject to the generic co-payment amount and the member must also pay the difference in cost between the generic and brand drugs.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 12, 2000, effective Jan. 1, 2001, expired June 29, 2001. Original rule filed Dec. 12, 2000, effective June 30, 2001. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: There is a potential for some individual state members to incur additional costs in excess of five hundred dollars (\$500) due to the changes in some of the co-payment levels for pharmacy services. However, it is impossible to accurately estimate the number of persons this would impact or the associated costs because it will be dependent upon the amount and type of individual health care needs that arise during this year. Additionally, higher co-payments could be offset in some cases if members switch to generic drugs when possible.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

FISCAL NOTE
PRIVATE ENTITY COST

XVII. RULE NUMBER

Title: 22 – Missouri Consolidated Health Care Plan

Chapter: Chapter 10

Type of Rulemaking: Proposed Amendment to Rule

Rule Number and Name: 2.064 HMO/POS Standard Option Summary of Medical Benefits

XVIII. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Percentage using pharmacy of the 35,173 members	Individuals enrolled in the MCHCP in an HMO/POS in the Standard option	\$2.201 million

XIX. WORKSHEET

The cost for pharmacy in the health benefit plan has been increasing at a far greater rate than any other benefit. Consequently, the plan design for many programs is being modified to counter an increase in the cost and utilization in this area.

The MCHCP will be implementing a revised three-tiered benefit design. Under this arrangement, the member will pay the following:

\$10 for a generic prescription on the formulary
 \$20 for a brand prescription on the formulary
 \$35 for a non-formulary drug

If the member uses a brand prescription when a generic was available, s/he will have to pay the generic co-payment plus the difference in the cost of the two drugs.

The current benefit design for the Standard option is:

\$10 for a generic prescription on the formulary
 \$20 for a brand prescription on the formulary
 \$30 for a non-formulary drug

XX. ASSUMPTIONS

It is estimated that the change in coverage for this benefit will cost all state members approximately a total \$6.635 million. This is based upon current utilization patterns and the resulting actuarial projections for next year using the revised plan design. Consequently, it is estimated that the portion attributable to HMO/POS Standard option members is \$2.201 million.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—Plan Options

PROPOSED RESCISSION

22 CSR 10-2.065 Staff Model Summary of Medical Benefits. This rule established the policy of the board of trustees regarding the summary of medical benefits of the Staff Model under the Missouri Consolidated Health Care Plan.

PURPOSE: *This rule is being rescinded as this option is no longer available under the Missouri Consolidated Health Care Plan.*

AUTHORITY: *section 103.059, RSMo 2000. Emergency rule filed Dec. 12, 2000, effective Jan. 1, 2001, expired June 29, 2001. Original rule filed Dec. 12, 2000, effective June 30, 2001. Emergency rescission filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 17, 2001.*

PUBLIC COST: *This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

PRIVATE COST: *This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—Plan Options

PROPOSED AMENDMENT

22 CSR 10-2.067 [Staff Model,] HMO and POS Limitations. The board is amending the title and subsections (1)(J), (1)(S) and (1)(CC).

PURPOSE: *The amendment includes changes made by the board of trustees regarding the limitations of the HMO/POS plans in the Missouri Consolidated Health Care Plan.*

(1) Benefits shall not be payable for, or in connection with, any medical benefit, services or supplies which do not come within the definition of covered charges, or any of the following:

(J) Hearing aids:/—

 1. *HMO/POS—L/ limited to bilateral hearing aids every two (2) years;*

 2. *Staff Model—Limited to bilateral hearing aids every three (3) years;*

(S) Out-of-network services without the proper referrals in an HMO *[(including staff model)]* are not covered services;

(CC) Skilled nursing services are limited to *one hundred (100) days annually (staff model),* one hundred and twenty (120) days annually *[(HMO/POS)];*

AUTHORITY: *section 103.059, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995,*

*expired Aug. 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the *Code of State Regulations.* Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. Amended: Filed Dec. 17, 2001.*

PUBLIC COST: *This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

PRIVATE COST: *This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—Plan Options

PROPOSED AMENDMENT

22 CSR 10-2.075 Review and Appeals Procedure. The board is amending subsection (5)(B).

PURPOSE: *The amendment includes changes made by the board of trustees regarding the review and appeals procedure of the Missouri Consolidated Health Care Plan.*

(5) All insured members of the Missouri Consolidated Health Care Plan (MCHCP) shall use the claims and administration procedures established by the health maintenance organization (HMO), point-of-service (POS) or preferred provider organization (PPO) health plan contract applicable to the insured member. Only after these procedures have been exhausted may the insured appeal to the Missouri Consolidated Health Care Plan Board of Trustees to review the decision of the health plan contractor.

(B) The board may utilize a hearing officer, such as the Administrative Hearing Commission, to conduct a fact-finding hearing, make proposed findings of fact and conclusions of law.

1. The hearing will be scheduled by the MCHCP.

2. The parties to the hearing will be the insured and the applicable health plan contractor.

3. All parties shall be notified, in writing of the date, time and location of the hearing.

4. All parties shall have the right to appear at the hearing and submit written or oral evidence. The appealing party shall be responsible for all copy charges incurred by MCHCP in connection with any documentation that must be obtained through the MCHCP. These fees will be reimbursed should the party prevail in his/her appeal. They may cross-examine witnesses. They need not appear and may still offer written evidence. The strict rules of evidence shall not apply.

5. The party appealing to the board shall carry the burden of proof.

6. The independent hearing officer shall propose findings of fact and conclusions of law, along with its recommendation, to the board. Copies of the summary, findings, conclusions and recommendations shall be sent to all parties.

AUTHORITY: *section 103.059, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995.*

*Emergency rule filed April 13, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 17, 2001, effective Jan. 1, 2002, expires June 29, 2002. Amended: Filed Dec. 17, 2001.*

PUBLIC COST: *This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

PRIVATE COST: *This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 100—Division of Credit Unions

Chapter 2—State-Chartered Credit Unions

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Credit Unions under section 370.100, RSMo 2000, the director amends a rule as follows:

4 CSR 100-2.040 Loans is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1795-1796). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Credit Unions received one comment on the proposed amendment.

COMMENT: The Missouri Credit Union System submitted a comment in support of the proposed amendment.

RESPONSE: The Division of Credit Unions appreciates having the support of the Missouri Credit Union System in this effort.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 100—Division of Credit Unions

Chapter 2—State-Chartered Credit Unions

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Credit Unions under section 370.100, RSMo 2000, the director amends a rule as follows:

4 CSR 100-2.160 Call Reports is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1796-1797). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Credit Unions received one comment on the proposed amendment.

COMMENT: The Missouri Credit Union System submitted a comment in support of the proposed amendment.

RESPONSE: The Division of Credit Unions appreciates having the support of the Missouri Credit Union System in this effort.

Title 10—DEPARTMENT OF NATURAL RESOURCES

Division 10—Air Conservation Commission

Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-6.050 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 16, 2001 (26 MoReg 1456-1458). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received comments from fourteen sources; the U.S. Environmental Protection Agency (EPA), Kingsford Manufacturing Company (Kingsford), Kansas City Power & Light (KCPL), the Missouri Ag Industries Council, Inc., Central Electric Power Cooperative (CEPC), the City of Independence Water Pollution Control Department, Associated Electric Cooperative, Inc. (AECI), the Missouri Limestone Producers Association (MLPA), Associated General Contractors of Missouri, Inc. (AGC/MO), Metropolitan St. Louis Sewer District, Empire District Electric Company, Springfield City Utilities, Associated Industries of Missouri and the Regulatory Environmental Group for Missouri (REGFORM). The comments were generally supportive of the amendment but requested language changes. Comments were also received from Utilicorp United, Inc. after the public comment period closed.

These comments will not be specifically addressed but were similar in nature to comments from other sources.

COMMENT: The EPA suggested that language from EPA's September 20, 1999, guidance titled—State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown—be included in this rule amendment. Specifically, language pertaining to the affirmative defense provisions for malfunction, startup and shutdown.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program agrees with the changes suggested by the EPA and the appropriate language has been added to subsection (3)(C). Language has also been added to subsection (3)(A) and paragraph (3)(C)2. to require sources to include the name of the person who first discovered the malfunction and the precise time and date it was first discovered.

COMMENT: The EPA recommends including a limitation that this rule may not be used to excuse excess emissions that occur under any applicable federal technology standard including New Source Performance Standards (10 CSR 10-6.070), National Emissions Standards for Hazardous Air Pollutants (10 CSR 10-6.080) or Maximum Achievable Control Technology (10 CSR 10-6.075).

RESPONSE: The department's Air Pollution Control Program agrees with EPA that it is important that this rule not be used to limit the authority of the department to enforce the above mentioned rules. However, the department's Air Pollution Control Program does not believe additional language is required. Subsection (3)(E), which states that nothing in this rule shall be construed to limit the authority of the director or the commission to take appropriate action, under sections 643.080, 643.090 and 643.151, RSMo to enforce the provisions of the Air Conservation Law and the corresponding rule, is sufficient language to protect the enforceability of other air pollution rules and explain the limitation of this rule. No changes were made to the rule as a result of this comment.

COMMENT: The EPA also commented that the language in subsection (3)(D) gives the impression that as long as a source chooses not to comply with subsections (3)(A) and (3)(B) and a Notice of Excess Emissions (NOEE) is not issued, then the source is given a free ride. The EPA concludes that this approach is unacceptable and should be removed from the rule. Failure to report should be an explicit violation of the rule. Subsection (3)(D) should just include what factors would be considered and what information may be requested from a source to determine if an excess emissions will be excused.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program agrees that failure to report is a violation of this rule and the language—in the event that a facility did not abide by the requirements of subsections (3)(A) and (3)(B) and—was removed from original subsection (3)(D), new subsection (3)(C). The department's Air Pollution Control Program believes deleting this language will remove the uncertainty of this subsection.

COMMENT: Kingsford supports the concept of this rule amendment, however, they do not support the specific language used in this amendment. It is unclear to them how this amendment will affect sources that use Continuous Emission Monitoring Systems and submit quarterly written reports of exceedances as part of their permit agreement. Kingsford requested that an exemption be added to the rule that would exclude sources with site specific Settlement Agreements that contained provisions concerning start-up, shutdowns and malfunctions.

RESPONSE: The intent of this proposed amendment is not to require unnecessary or burdensome reporting requirements. The

intent of this amendment is to benefit industry by allowing them to report excess emissions before the issuance of a Notice of Violation (NOV). By avoiding the initial issuance of the NOV or NOEE, the subsequent process of trying to determine whether or not the notice was appropriate would also be eliminated. Facilities will be expected to comply with this rule when applicable, regardless of other requirements. All sources with an operating permit with less than three years between renewal and the effective date of this rule change are subject to these requirements but may wait until their operating permit renewal to make the change to their operating permit. All other sources with operating permit must submit modifications within six months of the effective date of the rule amendment. No changes were made to the rule as a result of this comment.

COMMENT: Kingsford commented that subsection (3)(F) appears to state that even if a source has complied with this regulation, they could still be found liable for the excess emissions. Kingsford believes this changes the long-held view of the meaning of this rule in the regulated community. The current regulation requires the department's Air Pollution Control Program to evaluate a number of factors before any enforcement action can be initiated. Kingsford also questions the addition of subsection (3)(F). They feel it only repeats subsection (3)(E) and is confusing and vague. REGFORM also commented on the need for subsection (3)(F), they feel the intent of the department's Air Pollution Control Program is captured in subsection (3)(D) and (3)(E).

RESPONSE: The department's Air Pollution Control Program has not changed the intention of this rule. It is still to be used as a tool to determine if enforcement action is warranted against a facility that has had an excess of emissions. The interpretation made by Kingsford on subsection (3)(F) is correct, compliance with this regulation does not absolve the facility of liability for the excess emissions. Compliance with the original rule did not absolve the facility of liability, this rule amendment just explains it more explicitly. Subsection (3)(E) is included to protect the enforceability of the Air Conservation Law and the corresponding rule. Subsection (3)(F) is included to make facilities aware that they may still be liable. No changes were made to the rule as a result of this comment.

COMMENT: Kingsford disagrees with the fiscal note cost approximations. They feel the proposed amendment costs would exceed \$500. CEPC, the Metropolitan St. Louis Sewer District, Associated Industries of Missouri and REGFORM also disagree with the estimated cost of this proposed amendment. They believe this amendment would cost public and private entities more than \$500.

RESPONSE: The department's Air Pollution Control Program believes that the addition of a threshold level in subsections (3)(A) and (3)(B) of this rule will drastically reduce the amount of reporting required by this rule, keeping costs below \$500. Also, this amendment does not require any additional information from these sources, it just requires it to be submitted in a more timely fashion. No changes were made to the rule as a result of this comment.

COMMENT: KCPL recommends that the oral reporting requirements for malfunction, release, maintenance, startup, shutdown or engineering limitations of equipment be deleted. They feel these requirements do not provide sufficient benefit to the agency to justify the time required for compliance by both industry and agency staff. They also state that these requirements exceed the requirements of any legislative intent, regulation or Title V permit condition. REGFORM also recommended that the oral reporting requirement be removed from this rule. They also suggested the Department should provide facilities with a form that could be faxed to the Department instead of an oral report. AEI is opposed

to any sort of oral reporting. They propose the removal of this requirement due to the burden it places on industry.

RESPONSE AND EXPLANATION OF CHANGE: The oral reporting requirements were deleted from this rule. The department's Air Pollution Control Program believes that sufficient reporting will be provided by the written report using the two day time frame.

COMMENT: KCPL states that written reports for malfunctions should only be required for significant events that result in exceeding the applicable regulation for a period in excess of four continuous hours.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has concluded that a threshold limit should be included in this rule. However, four hours is not consistent with EPA guidance and other state's rules. Language was added to subsections (3)(A) and (3)(B) to include a limit of one hour for excess emissions.

COMMENT: KCPL suggests that written and oral reporting requirements for equipment shutdown for situations where air pollution control equipment is removed simultaneously with the process unit for all industrial sources should be deleted. Air pollution control equipment removal absent the removal of the process equipment should require reporting to the department, as proposed.

RESPONSE: In the event that air pollution control equipment is removed simultaneously with the process unit in an industrial source, it is unlikely that excess emissions will result if the entire process is being disassembled. If a total process is being disassembled and being replaced, construction permit determinations will apply under a like for like equipment replacement situation. Therefore, there would be no written and oral reporting requirements for equipment shutdown for situations where air pollution control equipment is removed simultaneously with the process unit for all industrial sources. No changes were made to the rule as a result of this comment.

COMMENT: KCPL commented that the definition of release in this rule is overly restrictive and should be eliminated. AECI and the Metropolitan St. Louis Sewer District also suggested that the definition of release be removed from the proposed amendment. Springfield City Utilities commented that the definition of release seemed overly broad.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program agrees with the suggestion, the definition of release has been removed from this rule since most episodes will be due to malfunction.

COMMENT: KCPL, CEPC, the City of Independence Water Pollution Control Department, AECI, the Metropolitan St. Louis Sewer District and REGFORM commented that the definition of malfunction in this regulation should be consistent with the definition in 10 CSR 10-6.020 Definitions and Common Reference Tables. The AGC/MO requests the definition of malfunction be changed to accommodate for significance levels and the language that pertains to normal yearly operating hours be deleted.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program agrees that the definition of malfunction in this regulation and in 10 CSR 10-6.020 are not consistent. Therefore, the definition of malfunction has been deleted from this rule and the definition from 10 CSR 10-6.020 will be applicable.

COMMENT: Missouri Ag Industries Council, Inc. commented that the word automatically should be inserted in front of—absolve—in subsection (3)(F).

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program agrees with this comment and has added—automatically—to subsection (3)(F).

COMMENT: CEPC commented that the existing rule is a tool for industry and the department's Air Pollution Control Program to evaluate excess emission events. The proposed rule is no longer a useful tool, but another repetitive and burdensome reporting exercise. The proposed language changes the whole focus of the rule to one of reporting and record keeping.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has not changed the intention of this rule. It is still to be used as a tool to determine if enforcement action is warranted against a facility that has had an excess of emissions. The intent of this proposed amendment is not to require unnecessary or burdensome reporting requirements. The intent of this amendment is to benefit industry by allowing them to report excess emissions before the issuance of an NOV. By avoiding the initial issuance of the NOV or NOEE, the subsequent process of trying to determine whether or not the notice was appropriate would also be eliminated. The department's Air Pollution Control Program also removed the oral reporting requirements, added a one hour threshold and made changes to be consistent with Title V requirements.

COMMENT: CEPC commented that with the implementation of Title V and the concept of proving continuous compliance, the need for this change seems moot. Most permits contain adequate provisions to address these conditions. The Metropolitan St. Louis Sewer District, REGFORM, the City of Independence Water Pollution Control Department and Springfield City Utilities also commented that these reporting requirements are contained in most facilities Title V operating permits. AECI believed that record keeping and continuous reporting for start-up, shutdown and malfunction exceedances can be adequately reported in a timely manner using current requirements. Empire Electric District Company also commented that excess emission reports are currently required under their Part 70 Operating Permit.

RESPONSE: Not all sources affected by this rule have a Title V permit and the conditions contained therein. All sources with an operating permit with less than three years between renewal and the effective date of this rule change are subject to these requirements but may wait until their operating permit renewal to make the change to their operating permit. All other sources with an operating permit must submit modifications within six months of the effective date of the rule amendment. This amendment is consistent with operating permit conditions contained in 10 CSR 10-6.065 part (6)(B)7.B.(IV). No changes were made to the rule as a result of this comment.

COMMENT: CEPC also commented that it is extremely presumptuous for the department's Air Pollution Control Program to suppose that it could define operating conditions for the industries it regulates. CEPC feels that is not the duty of the department's Air Pollution Control Program. A facility will determine if the condition is the result of a start-up, shutdown or malfunction, then the department's Air Pollution Control Program should review the data it receives and act accordingly.

RESPONSE: The intent of this amendment is to benefit industry by allowing them to report excess emissions before the issuance of an NOV. By avoiding the initial issuance of the NOV or NOEE, the subsequent process of trying to determine whether or not the notice was appropriate would also be eliminated. However, in the event that an NOEE is issued and the facility feels it is not warranted due to a start-up, shutdown or malfunction condition, enforcement discretion will be exercised if all of the necessary information is supplied to the department's Air Pollution Control

Program. No changes were made to the rule as a result of this comment.

COMMENT: CEPC does not feel a definition of—engineering limitations of equipment—is necessary. CEPC states that it is almost the same condition as malfunction.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program agrees that the two conditions are very similar. The department's Air Pollution Control Program has deleted the portion in the rule pertaining to engineering limitations of equipment and let these instances fall into the category of malfunction.

COMMENT: CEPC feels that the rule contains no incentive for facilities to participate in the advance notice requirements or submit the data required for all malfunctions or engineering limitations of equipment releases. There are no provisions that would penalize a facility for failure to report.

RESPONSE: Failure to comply with this rule is a violation of the Air Conservation Law and enforcement action will be taken accordingly. No changes were made to the rule as a result of this comment.

COMMENT: CEPC does not agree with the requirement in subsection (4)(A) pertaining to the inclusion of data on any required Emissions Inventory Questionnaire (EIQ). CEPC argues that the EIQ does not support the reporting of this data and the magnitude of the emissions would be difficult to calculate. The Metropolitan St. Louis Sewer District also commented that it would be difficult to report on their EIQ.

RESPONSE: The department's Air Pollution Control Program believes the EIQ does support the reporting of this information. Facilities should use best engineering judgement to estimate the magnitude of the release of excess emissions. No changes were made to the rule as a result of this comment.

COMMENT: The City of Independence Water Pollution Control Department and the Metropolitan St. Louis Sewer District commented that the proposed amendment does not clarify what qualifies as a malfunction, start-up or shutdown condition.

RESPONSE: This proposed amendment clarifies what information will be considered on a case-by-case basis during the determination process in the event that a facility receives an NOEE that they feel is not warranted due to start-up, shutdown or malfunction conditions. No changes were made to the rule as a result of this comment.

COMMENT: The City of Independence Water Pollution Control Department commented that they are not familiar with the supporting evidence for this rulemaking. They state that the proposed rule amendment goes beyond, and potentially conflicts with, federal reporting requirements on start-up, shutdown and malfunction conditions at air pollution sources.

RESPONSE: The EPA did not indicate any conflicts with federal reporting requirements in their comments on this proposed rule amendment. Many of the requirements in the proposed amendment are borrowed from EPA's September 20, 1999, guidance titled—State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown. This amendment is also consistent with operating permit conditions contained in 10 CSR 10-6.065 part (6)(B)7.B.(IV). No changes were made to the rule as a result of this comment.

COMMENT: The City of Independence Water Pollution Control Department is concerned with their ability to comply with the new requirements. They would prefer that the changes not be made, however if they are adopted, they requested language changes. They request that language be added to only require reporting

when the owner or operator has knowledge of an occurrence. They also requested that the reporting time limit begin following the time that the owner or operator becomes aware of the excess emissions.

RESPONSE: The department's Air Pollution Control Program believes that a facility should be aware of any excess emissions at their facility within the allotted reporting time. However, in the event that an NOEE is issued and the facility feels it is not warranted due to a start-up, shutdown or malfunction condition, enforcement discretion will be exercised if all of the necessary information is supplied to the department's Air Pollution Control Program. No changes were made to the rule as a result of this comment.

COMMENT: The City of Independence Water Pollution Control Department also commented that in subsection (3)(D), facilities are required to report their excess emissions on any EIQ. However, this requirement is not listed in subsections (3)(A), (3)(B) or (3)(C). The Metropolitan St. Louis Sewer District also commented on the inconsistency of the EIQ requirements.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program acknowledges that this is an oversight and all required information should be submitted on any EIQ. Appropriate language has been added to subsection (4)(B) to require the submission of this data.

COMMENT: AEI commented that the proposed rule amendment is not specific on how enforcement discretion will be determined. They request that all exceedances be reviewed on source specific criteria, such as: the nature of the business, compliance history, the source operating time during the reporting period, and the number of required start-ups and shutdowns.

RESPONSE: The department's Air Pollution Control Program has not changed the intention of this rule. It is still to be used as a tool to determine if enforcement action is warranted against a facility that has had an excess of emissions. In the event that an NOEE is issued and the facility feels it is not warranted due to a start-up, shutdown or malfunction condition, enforcement discretion will be exercised if all of the necessary information is supplied to the department's Air Pollution Control Program. No changes were made to the rule as a result of this comment.

COMMENT: AEI commented that it is not clear if enforcement discretion will be used for facilities that comply with subsections (3)(A), (3)(B) or (3)(C). AEI proposes that these subsections be removed to avoid confusion between enforcement and the regulated community.

RESPONSE: The department's Air Pollution Control Program agrees that subsection (3)(C) was confusing and it has been removed. However, subsections (3)(A) and (3)(B) are important to the integrity of this rule and will not be removed. In the purpose of the rule, it states that these submittals will be used by the director to determine whether the excess emissions were due to a start-up, shutdown or malfunction condition and that these determinations will be used in deciding whether or not enforcement action is appropriate. The department's Air Pollution Control Program believes this language is sufficient in stating that enforcement discretion will be used for information requested in subsections (3)(A) and (3)(B). No changes were made to the rule as a result of this comment.

COMMENT: The MLPA requested that source category specific requirements be added to the rule. They feel the proposed amendment would impose burdensome reporting requirements on their industry due to the frequency of start-ups and shutdown. If this was not possible, the MLPA suggested establishing an allowable time threshold for start-up and shutdown conditions before excess emissions due to these procedures become reportable and/or subject to

enforcement action. The AGC/MO thinks this proposed amendment subjects all malfunctions, maintenance, start-up and shutdown operations to reporting requirements, regardless of the significance of any excess emissions that may occur. The AGC/MO suggested that other states have used a one-hour threshold and it appears to be a reasonable threshold.

RESPONSE AND EXPLANATION OF CHANGE: After investigation, the department's Air Pollution Control Program has concluded that a threshold limit should be included in this rule. Language was added to subsections (3)(A) and (3)(B) to include a limit of one hour for excess emissions.

COMMENT: The AGC/MO commented that the proposed amendment creates a potential violation wholly on the failure of the regulated entity to accurately identify or anticipate the excess emission. The AGC/MO argues that except for major sources, which are subject to continuous monitoring, excess emissions are identified only by observation by the regulated entity or a Department of Natural Resources inspector.

RESPONSE: The intent of this amendment is to benefit industry by allowing them to report excess emissions before the issuance of an NOV. By avoiding the initial issuance of the NOV or NOEE, the subsequent process of trying to determine whether or not the notice was appropriate would also be eliminated. The department's Air Pollution Control Program has not changed the original intention of this rule. It is still to be used as a tool to determine if enforcement action is warranted against a facility that has had an excess of emissions. In the event that an NOEE is issued and the facility feels it is not warranted due to a start-up, shutdown or malfunction condition, enforcement discretion will be exercised if all of the necessary information is supplied to the department's Air Pollution Control Program. The department's Air Pollution Control Program has concluded that a facility should become aware of any excess emissions at their facility within the allotted reporting time. No changes were made to the rule as a result of this comment.

COMMENT: The Metropolitan St. Louis Sewer District commented that the proposed amendment assumes that emission sources will know their emissions at all times during start-up, shutdown or malfunctions.

RESPONSE: The department's Air Pollution Control Program concluded that a facility should be aware of any excess emissions at their facility within the allotted reporting time. However, in the event that an NOEE is issued and the facility feels it is not warranted due to a start-up, shutdown or malfunction condition, enforcement discretion will be exercised if all of the necessary information is supplied to the department's Air Pollution Control Program. No changes were made to the rule as a result of this comment.

COMMENT: Springfield City Utilities commented that the definition of engineering limitations of equipment is workable with the exception that it characterizes all control equipment as failures.

RESPONSE AND EXPLANATION OF CHANGE: After the suggestion of other commenters and some investigation, the department's Air Pollution Control Program concluded that malfunction and engineering limitations of equipment are very similar. The department's Air Pollution Control Program has decided to delete the portion in the rule pertaining to engineering limitations of equipment and let these instances fall into the category of malfunction.

COMMENT: Springfield City Utilities commented the definition of malfunction is reasonable and the 5% annual threshold is entirely appropriate. They reasoned that a greater breakdown rate could signify an inherent design problem requiring further evaluation.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program appreciates the support of this definition by Springfield City Utilities. However, based on other comments the department's Air Pollution Control Program has agreed that the definition of malfunction in this regulation and in 10 CSR 10-6.020 are not consistent. Therefore, the definition of malfunction has been deleted from this rule and the definition from 10 CSR 10-6.020 will be applicable. Language has also been added to subsection (3)(D) to address whether the excess emissions are a part of a recurring pattern indicative of inadequate design, operation or maintenance.

COMMENT: Springfield City Utilities suggested that the terms business day and close of business be defined in this rulemaking. They should be defined in terms of the department's Air Pollution Control Program's normal schedule, including state holidays. Springfield City Utilities also commented that the phrase—as soon as practicable to any maintenance, start-up or shutdown—implies that the department's Air Pollution Control Program would require notification on nights, weekends and holidays.

RESPONSE: The department's Air Pollution Control Program does not think the addition of these definitions is necessary. It is common practice that business days are Monday through Friday, 8 a.m. to 5 p.m., excluding state and federal holidays. No changes were made to the rule as a result of this comment.

COMMENT: Springfield City Utilities commented that including the information requested in subsection (3)(D) on an EIQ could be problematic but accommodated, as long as it was understood that it was only an estimate.

RESPONSE: The department's Air Pollution Control Program also believes the EIQ does support the reporting of this information. Facilities should use best engineering judgement to estimate the magnitude of the release of excess emissions. No changes were made to the rule as a result of this comment.

COMMENT: Springfield City Utilities commented that subsection (3)(B) should clarify the triggering mechanism for when exceedance would be expected. Some facilities start-up and run for weeks, while others start-up and shut down daily.

RESPONSE AND EXPLANATION OF CHANGE: Language was added to subsections (3)(A) and (3)(B) to include a limit of one hour for excess emissions. The department's Air Pollution Control Program believes this language will remove the uncertainty from these reporting requirements.

COMMENT: Springfield City Utilities feels that subsection (3)(D) restores the ability of facilities to not comply with sections (3)(A), (3)(B) or (3)(C) but not be penalized for their excess emissions. They agree with EPA's comment that the language appears to relieve the source from compliance with the earlier sections.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program appreciates the support of the Springfield City Utilities in the effort to stop facilities from getting away with their excess emissions. The department's Air Pollution Control Program agrees that failure to report is a violation of this rule and the language—in the event that a facility did not abide by the requirements of subsections (3)(A) and (3)(B) and was removed from original subsection (3)(D). The department's Air Pollution Control Program believes deleting this language will remove the uncertainty of this subsection. Also, language pertaining to the affirmative defense provisions for malfunction, start-up and shutdown from EPA's September 20, 1999, guidance titled—State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown—has been added to original subsection (3)(D). The department's Air Pollution Control Program believes these changes will reinforce the authority of this rule.

10 CSR 10-6.050 Start-Up, Shutdown and Malfunction Conditions

(2) Definitions. Definitions of certain terms in this rule, other than those specified in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) In the event of a malfunction, which results in excess emissions that exceeds one (1) hour, the owner or operator of such facility shall notify the Missouri Department of Natural Resources' Air Pollution Control Program in the form of a written report which shall be submitted within two (2) business days. The written report shall include, at a minimum, the following:

1. Name and location of installation;
2. Name and telephone number of person responsible for the installation;
3. Name of the person who first discovered the malfunction and precise time and date that the malfunction was discovered;
4. Identity of the equipment causing the excess emissions;
5. Time and duration of the period of excess emissions;
6. Cause of the excess emissions;
7. Air pollutants involved;
8. Estimate of the magnitude of the excess emissions expressed in the units of the applicable requirement and the operating data and calculations used in estimating the magnitude;
9. Measures taken to mitigate the extent and duration of the excess emissions; and
10. Measures taken to remedy the situation which caused the excess emissions and the measures taken or planned to prevent the recurrence of these situations.

(B) The owner or operator shall notify the Missouri Department of Natural Resources' Air Pollution Control Program at least ten (10) days prior to any maintenance, start-up or shutdown, which is expected to cause an excess release of emissions that exceeds one (1) hour. If notice cannot be given ten (10) days prior to any maintenance, start-up or shutdown, which is expected to cause an excess release of emissions, notice shall be given as soon as practicable prior to the maintenance, start-up or shutdown or orally as soon as practical during normal working hours after the release and no later than close of business of the following working day with written notice to follow within ten (10) working days of the release. The owner or operator of such facility shall notify the Missouri Department of Natural Resources' Air Pollution Control Program in the following ways: a written report including:

1. Name and location of installation;
2. Name and telephone number of person responsible for the installation;
3. Name of the person who first discovered the malfunction and precise time and date that the malfunction was discovered;
4. Identity of the equipment causing the excess emissions;
5. Time and duration of the period of excess emissions;
6. Type of activity and the reason for the maintenance, start-up or shutdown;
7. Type of air contaminant involved;
8. Estimate of the magnitude of the excess emissions expressed in the units of the applicable emission control regulation and the operating data and calculations used in estimating the magnitude;
9. Measures taken to mitigate the extent and duration of the excess emissions; and
10. Measures taken to remedy the situation which caused the excess emissions and the measures taken or planned to prevent the recurrence of these situations.

(C) Upon receipt of a notice of excess emissions issued by the Missouri Department of Natural Resources or an agency holding a certificate of authority under section 643.140, RSMo, the source to which the notice is issued may provide information showing that

the excess emissions were the consequence of a malfunction, start-up or shutdown. Based upon any information submitted by the source operator and any other pertinent information available, the director or the commission shall make a determination whether the excess emissions constitute a malfunction, start-up or shutdown and whether the nature, extent and duration of the excess emissions warrant enforcement action under section 643.080 or 643.151, RSMo.

1. In determining whether enforcement action is warranted, the director or commission shall consider the following factors:

A. Whether the excess emissions during start-up, shutdown or malfunction occurred as a result of safety, technological or operating constraints of the control equipment, process equipment or process;

B. Whether the air pollution control equipment, process equipment or processes were, at all times, maintained and operated to the maximum extent practical, in a manner consistent with good practice for minimizing emissions;

C. Whether repairs were made as expeditiously as practicable when the operator knew or should have known when excess emissions were occurring;

D. Whether the amount and duration of the excess emissions were limited to the maximum extent practical during periods of this emission;

E. Whether all practical steps were taken to limit the impact of the excess emissions on the ambient air quality;

F. Whether all emission monitoring systems were kept in operation if at all possible;

G. Whether the owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence;

H. Whether the excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance; and

I. Whether the owner or operator properly and promptly notified the appropriate regulatory authority.

2. The information provided by the source operator under paragraph (3)(C)1. shall include, at a minimum, the following:

A. Name and location of installation;

B. Name and telephone number of person responsible for the installation;

C. Name of the person who first discovered the malfunction and precise time and date that the malfunction was discovered;

D. The identity of the equipment causing the excess emissions;

E. The time and duration of the period of excess emissions;

F. The cause of the excess emissions;

G. The type of air contaminant involved;

H. A best estimate of the magnitude of the excess emissions expressed in the units of the applicable emission control regulation and the operating data and calculations used in estimating the magnitude;

I. The measures taken to mitigate the extent and duration of the excess emissions; and

J. The measures taken to remedy the situation which caused the excess emissions and the measures taken or planned to prevent the recurrence of these situations.

(D) Nothing in this rule shall be construed to limit the authority of the director or the commission to take appropriate action, under sections 643.080, 643.090 and 643.151, RSMo to enforce the provisions of the Air Conservation Law and the corresponding rule.

(E) Compliance with this rule does not automatically absolve the owner or operator of such facility of liability for the excess emissions reported.

(4) Reporting and Record Keeping.

(B) The information submitted according to paragraphs (3)(A)2., (3)(B)2. and (3)(C)2., shall be kept on file at the installation for a period of five (5) years. This data shall be included in emissions reported on any required Emissions Inventory Questionnaire. The information shall be available to the director upon request.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 2000, the director adopts a rule as follows:

12 CSR 10-110.955 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 4, 2001 (26 MoReg 1679–1681). Changes have been made in the text of the proposed rule, and those changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received two (2) written comments on the proposed rule.

COMMENT: The commenter requested the department clarify the application of the rule to the Missouri Department of Transportation (MoDOT).

RESPONSE AND EXPLANATION OF CHANGE: The department added MoDOT to the list of exempt organizations in subsection (2)(A) of the regulation. The department also added a reference to MoDOT in subsection (3)(B).

COMMENT: The commenter requested further clarification of the application of section 144.062, RSMo, addressed in section (3)(O) of the regulation, particularly regarding its application to political subdivisions.

RESPONSE AND EXPLANATION OF CHANGE: The department clarified subsection (3)(O) by making it clear that qualifying entities are listed in section 144.062, RSMo, rather than this rule. Also added was a cross reference to 12 CSR 10-112.010, which contains a more complete discussion of the operation of section 144.062, RSMo. As requested, the department added a new example in subsection (4)(E) clarifying that section 144.062, RSMo, does not apply to MoDOT.

COMMENT: The commenter requested further elaboration of the sales tax exempt status of hotel rooms and meals contracted for directly by tax-exempt organizations (including state agencies).

RESPONSE: The department did not add any discussion of the purchase of meals or lodgings by exempt entities because that topic is fully discussed in 12 CSR 10-110.220.

COMMENT: The commenter requested clarification of the requirements for project exemption certificates under section 144.062, RSMo.

RESPONSE AND EXPLANATION OF CHANGE: The department changed subsection (3)(O) to make it clear that the certificate does not have to be approved by the Department of Revenue.

COMMENT: The commenter also requested the addition of an annotation for *Sports Unlimited, Inc. v. Director of Revenue*, 962 S.W.2d 885 (Mo. Banc 1998).

RESPONSE: The department has not added this annotation because the holding in that case has been superseded by a subsequent amendment to section 144.062, RSMo. Furthermore, the potential confusion noted by the commenter due to an annotation to 12 CSR 10-3.388 would be alleviated because that regulation will be rescinded.

12 CSR 10-110.955 Sales and Purchases—Exempt Organizations

(2) Definition of Terms.

(A) Exempt organization—one (1) of the following types of organizations:

1. United States government or agency;
2. Political subdivisions of the state of Missouri;
3. Missouri Department of Transportation;
4. Rural water districts;
5. Religious organizations and institutions;
6. Charitable organizations and institutions;
7. Public elementary and secondary schools;
8. Not-for-profit civic, social, service or fraternal organizations;
9. Eleemosynary, penal institutions and industries of the state of Missouri;
10. Public and private not-for-profit post-secondary educational institutions;
11. State of Missouri relief agencies;
12. Benevolent, scientific and educational agricultural associations;
13. Nonprofit summer theater organizations;
14. Missouri state fair and county agricultural and mechanical societies;
15. Private not-for-profit elementary and secondary schools;
16. Interstate compact agencies.

(3) Basic Application of Rule.

(B) All sales of tangible personal property or taxable services to the state of Missouri or its political subdivisions are exempt from tax. Except for school districts and the Missouri Department of Transportation, sales by the state of Missouri and its political subdivisions are subject to tax. Sales by school districts and the Missouri Department of Transportation are exempt from tax. Amounts paid in or for any place of amusement, entertainment or recreation, games or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a political subdivision are exempt from tax, if all the proceeds benefit the political subdivision. Sales to other states and their political subdivisions are not exempt from tax.

(O) For exempt entities listed in 144.062, RSMo, all sales of tangible personal property and materials, for the purpose of constructing, repairing or remodeling facilities that are related to the entity's exempt functions and activities, to a contractor or other entity purchasing for the exempt entity pursuant to the requirements of section 144.062, RSMo, are exempt from tax. To claim the exemption, the exempt entity must provide a project exemption certificate to all contractors, subcontractors or other entities. Such contractors, subcontractors and other entities must provide a copy of the project exemption certificate to sellers when purchasing tangible personal property or materials for such facilities. See 12 CSR 10-112.010.

(4) Examples.

(E) A Missouri contractor purchases materials and supplies in Missouri to perform a construction contract for a Missouri school district. The school district is an exempt entity listed in section 144.062, RSMo. Prior to making its purchases, the contractor obtains an authorized exemption certificate from the district. The contractor's purchases are exempt from tax because it obtained a copy of the authorized exemption certificate prior to making its purchases.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 4—Postcard Voter
Application and Forms

ORDER OF RULEMAKING

By the authority vested in the secretary of state under sections 115.155.5 and 115.159, RSMo 2000, the secretary rescinds a rule as follows:

15 CSR 30-4.010 Postcard Voter Application and Forms is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1825). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 4—Postcard Voter
Application and Forms

ORDER OF RULEMAKING

By the authority vested in the secretary of state under sections 115.155.5 and 115.159, RSMo 2000, the secretary adopts a rule as follows:

15 CSR 30-4.010 is adopted.

A notice of the proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1825–1827). Those sections with changes are reprinted here. This proposed rule becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: Members of the secretary of state's staff and the Blunt Commission suggested some minor changes to the questions being asked in subsection (2)(C) of the rule, as well as some minor changes for the top portion of the card in subsection (2)(F) of the rule.

COMMENT: It was suggested that the words "No PO Boxes" be added to paragraph 7. in subsection (2)(C).

RESPONSE AND EXPLANATION OF CHANGE: Paragraph 7. will be changed to include the suggested language.

COMMENT: It was suggested that the words "if available" in paragraph 14. in subsection (2)(C) should be changed to "optional" to coincide with statutory language.

RESPONSE AND EXPLANATION OF CHANGE: Paragraph 14. will be changed to reflect the suggested language.

COMMENT: It was suggested that paragraph 15. in subsection (2)(C) was not needed as the information was included in paragraph 16. of the same subsection, and that in its place the question "Place of Birth (optional)" should be added to coincide with statutory language.

RESPONSE AND EXPLANATION OF CHANGE: Paragraph 15. will be changed to reflect the suggested language.

COMMENT: It was suggested that in addition to the existing language in paragraph 17. of subsection (2)(C) the following should be included "Section, Township and Range _____". My neighbors are _____.

RESPONSE AND EXPLANATION OF CHANGE: Paragraph 17. will be changed to reflect the suggested language.

COMMENT: It was suggested that the phrase "Voter Declaration (read, sign and date below)" be deleted to provide additional space for the voter's signature.

RESPONSE AND EXPLANATION OF CHANGE: Paragraph 18. will be changed to reflect the suggested language.

COMMENT: It was suggested that the language be changed in subsection (2)(F) to allow for more flexibility in the phrasing of the statement listed in paragraph 1. of the proposed rule, and that the statement in paragraph 2. be printed in black ink and read "THIS CARD IS NOT PROOF OF REGISTRATION."

RESPONSE AND EXPLANATION OF CHANGE: Subsection (2)(F) will be changed to reflect the suggested language.

15 CSR 30-4.010 Postcard Voter Application and Forms

(2) Postcard Application Form Format and Content—

(C) The questions asked on the postcard application form shall be identical to those questions listed below:

1. New Registration, Address Change or Name Change;
2. Male or Female;
3. Last Name;
4. First Name;
5. Middle Name;
6. Jr., Sr., II, III, or IV;
7. Address where you live (House No., Street, Apt. No. or Rural Route and Box—No PO Boxes);
 8. City;
 9. County;
 10. Zip Code;
 11. Address where you get your mail (if different from above);
 12. Date of Birth;
 13. Last Four Digits of Social Security Number;
 14. Daytime Phone No. (optional);
 15. Place of Birth (optional);
 16. Name and Address on Last Voter Registration;
 17. Rural Voters (complete this section if you live outside the city limits of any city) I live _____ miles N E S W of _____ . Section, Township and Range _____ . My neighbors are _____ ;
 18. I hereby certify that I am a citizen of the United States and a resident of the state of Missouri. I am at least seventeen and one-half years of age. I have not been adjudged incapacitated by any court of law. If I have been convicted of a felony or a misdemeanor connected with the right of suffrage, I have had the voting disabilities from such conviction removed pursuant to law. I swear under penalty of perjury that all statements made on this card are true to the best of my knowledge and belief;
19. Date; and
20. Signature;

(F) The top portion of the card shall contain a statement printed in red ink explaining that the application will be confirmed by mail within seven (7) business days of its receipt by the election authority, and the following statement printed in black ink "THIS CARD IS NOT PROOF OF REGISTRATION."

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 9—Uniform Counting Standards

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 115.225, RSMo 2000, the secretary adopts a rule as follows:

15 CSR 30-9.010 Uniform Counting Standards—Punch Card Voting Systems is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1828). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 9—Uniform Counting Standards

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 115.225, RSMo 2000, the secretary adopts a rule as follows:

15 CSR 30-9.020 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1828–1829). Those sections with changes are reprinted here. This proposed rule becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: The secretary of state received six comments on this rule.

COMMENT: Pam Louderbaugh, Dallas County Clerk, Marlene Wainscott, Bates County Clerk, Mary Blanton, Clinton County Clerk & Hubbard & Rehard, P.C., attorneys for the Platte County Board of Election Commissioners suggested that the wording used to require that machines be programmed to reject blank ballots in section (2) should be changed to clarify that blank ballots, not ballots with an undervoted race are to be rejected.

RESPONSE AND EXPLANATION OF CHANGE: Section (2) will be changed to make this clarification.

COMMENT: Hubbard & Rehard, P.C., attorneys for the Platte County Board of Election Commissioners suggested that the provisions in section (2) should only apply when a hand recount becomes necessary.

RESPONSE: Our office believes that it is critical to establish uniform counting standards to be used at all times in the counting process and as a result no changes were made as a result of this comment.

COMMENT: Hubbard & Rehard, P.C., attorneys for the Platte County Board of Election Commissioners suggested that the language in subsection (3)(A) be changed to accommodate ballots that use ovals as well as squares.

RESPONSE AND EXPLANATION OF CHANGE: Subsection (3)(A) will be changed to reflect this suggestion.

15 CSR 30-9.020 Uniform Counting Standards—Optical Scan Voting Systems

(2) Prior to tabulating ballots all machines shall be programmed to reject blank ballots where no votes are recorded, or where an overvote is registered in any race.

(3) In jurisdictions using optical scan systems, a valid vote for a write-in candidate must include the following:

(A) A distinguishing mark in the designated location preceding the name of the candidate;

(B) The name of the candidate. If the name of the candidate, as written by the voter, is substantially as declared by the candidate it shall be counted, or in those circumstances where the names of candidates are similar, the names of candidates as shown on voter registration records shall be counted; and

(C) The name of the office for which the candidate is to be elected.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 9—Uniform Counting Standards

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 115.225, RSMo 2000, the secretary adopts a rule as follows:

15 CSR 30-9.030 Uniform Counting Standards—Paper Ballots is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1829). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 115.225, RSMo 2000, the secretary rescinds a rule as follows:

15 CSR 30-10.020 Certification Statements for New or Modified Electronic Voting Systems is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1829). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 115.225, RSMo 2000, the secretary adopts a rule as follows:

15 CSR 30-10.020 Certification Statements for New or Modified Electronic Voting Systems is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1829–1831). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 115.225, RSMo 2000, the secretary rescinds a rule as follows:

15 CSR 30-10.040 Electronic Ballot Tabulation—Counting Preparation is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1831). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 115.225, RSMo 2000, the secretary adopts a rule as follows:

15 CSR 30-10.040 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1831–1832). Those sections with changes are reprinted here. This proposed rule becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: The secretary of state received one comment on this rule.

COMMENT: Hubbard & Rehard, P.C., attorneys for the Platte County Board of Election Commissioners suggested that the words “punched or” should be deleted from paragraph (7)(C)8. to clarify that this section applies to both punch card and optical scan systems.

RESPONSE AND EXPLANATION OF CHANGE: This paragraph will be changed by replacing the word “Cards” with “Ballots” to reflect the suggestion made in this comment.

15 CSR 30-10.040 Electronic Ballot Tabulation—Counting Preparation

(7) Prior to election day the election authority shall supervise a public logic and accuracy test of the electronic tabulating equipment conducted by the accuracy certification team.

(C) The election authority shall prepare an appropriate logic and accuracy test deck which will include the following conditions:

1. Each ballot position must be tested;

2. No two (2) candidates for the same office may receive the same number of votes, but each candidate must receive one (1) vote;

3. No ballot question may receive the same number of votes for and against;

4. In situations where a voter can legally vote for more than one (1) person for an office, at least one (1) card shall be voted for the maximum number of allowable candidates;

5. One (1) card shall be marked to have one (1) more vote for each candidate or question than is allowable;

6. One (1) card shall have no votes recorded on it;

7. In general partisan elections, each party shall receive at least one (1) straight party vote. Additionally each party shall receive at least one (1) straight party vote where a candidate of another party receives a vote on the ballot;

8. Ballots should be punched or marked to test all name rotations, if used; and

9. One (1) card (if possible) shall contain a vote for a candidate for whom persons using that ballot format are not entitled to vote.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 115.225, RSMo 2000, the secretary rescinds a rule as follows:

15 CSR 30-10.060 Electronic Ballot Tabulation—Election Procedures is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1832). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

ORDER OF RULEMAKING

By the authority vested in the secretary of state under section 115.225, RSMo 2000, the secretary adopts a rule as follows:

15 CSR 30-10.060 Electronic Ballot Tabulation—Election Procedures is adopted.

A notice of the proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1832–1833). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective **March 1, 2002**.

SUMMARY OF COMMENTS: The secretary of state received two comments on this rule.

COMMENT: Hubbard & Rehard, P.C., attorneys for the Platte County Board of Election Commissioners suggested that subsection (2)(D) cannot be complied with, claiming the last transaction is to switch the machine to election mode.

RESPONSE: It is the position of this office that the switching to election mode is part of the testing process and as such no change is needed.

COMMENT: Hubbard & Rehard, P.C., attorneys for the Platte County Board of Election Commissioners suggested that section (3) mandating a post-test will result in the loss of data on the memory cards and therefore, this section should be changed.

RESPONSE: At this time our office does not have the statutory authority to make the requested change.

Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of Missouri
Chapter 4—Membership and Creditable Service

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board hereby amends a rule as follows:

16 CSR 10-4.012 Payment for Reinstatement and Credit Purchases is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1833–1834). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of Missouri
Chapter 5—Retirement, Options and Benefits

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board hereby amends a rule as follows:

16 CSR 10-5.055 Cost-of-Living Adjustments is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1834). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of Missouri
Chapter 5—Retirement, Options and Benefits

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board hereby adopts a rule as follows:

16 CSR 10-5.070 Qualified Governmental Excess Benefit Arrangement is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1834–1835). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of Missouri
Chapter 6—The Non-Teacher School Employee Retirement System of Missouri

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.610, RSMo 2000, the board hereby amends a rule as follows:

16 CSR 10-6.045 Reinstatement and Credit Purchases is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1835). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 2—Membership and Benefits

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Board under sections 50.1000 and 50.1210–50.1260, RSMo 2000, the board amends a rule as follows:

16 CSR 50-2.050 Certifying Service and Compensation is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2001 (26 MoReg 1835–1836). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs and other items required to be published in the *Missouri Register* by law.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**
Division 100—Division of Credit Unions

**ACTIONS TAKEN ON APPLICATIONS FOR NEW
GROUPS OR GEOGRAPHIC AREAS**

Pursuant to section 370.081(4), RSMo 2000, the director of the Missouri Division of Credit Unions is required to cause notice to be published that the director has either granted or rejected applications from the following credit unions to add new groups or geographic areas to their membership and state the reasons for taking these actions.

The following applications have been granted. These credit unions have met the criteria applied to determine if additional groups may be included in the membership of an existing credit union and have the immediate ability to serve the proposed new groups or geographic areas. The proposed new groups or geographic areas meet the requirements established pursuant to 370.080(2), RSMo 2000.

Credit Union	Proposed New Group or Geographic Area
Northwest Missouri Regional Credit Union 1000 N. College Drive Maryville, MO 64468	Any persons who reside or work in Nodaway County
St. Louis Telephone Employees' Credit Union 4650 Hampton Avenue St. Louis, MO 63109-2714	Individuals who reside or work in St. Louis County, St. Charles County, Jefferson County, and Franklin County
Electro Savings Credit Union 1805 Craigshire Drive St. Louis, MO 63146	Individuals who reside or work in St. Louis City, St. Louis County, St. Charles County, and Jefferson County
St. Louis Community Credit Union 3651 Forest Park Avenue St. Louis, MO 63118	Individuals who live or work in 63111, 63118, 63117, 63119, 63143, and 63144

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

IN ADDITION

A proposed amendment to 10 CSR 10-6.050 was published in the *Missouri Register* on July 16, 2001 (26 MoReg 1456–1458) and the final order of this same rule is published in this issue. The subsections were relettered in section (3) in the final order of rule-making in response to a comment from a member of the public. Due to an oversight by the agency, a proper citation in subsection (4)(A) referencing, subsection (3)(D) was inadvertently not corrected to subsection (3)(C). This corrects that error and subsection (4)(A) is reprinted here for clarification purposes only.

10 CSR 10-6.050 Start-Up, Shutdown and Malfunction Conditions

(4) Reporting and Record Keeping.

(A) The information specified in subsection (3)(C) shall be submitted to the director not later than fifteen (15) days after receipt of the notice of excess emissions. Information regarding the type and amount of emissions and time of the episode shall be recorded and kept on file. This data shall be included in emissions reported on any required Emissions Inventory Questionnaire.

Schedule of Compensation as Required by Section 476.405 RSMo

	RSMo Citation	Highest Salary FY 2001	Highest Salary FY 2002
<u>Supreme Court</u>			
Chief Justice	477.130	\$125,500	\$125,500
Judges	477.130	123,000	123,000
<u>Court of Appeals</u>			
Judges	477.130	115,000	115,000
<u>Circuit Court</u>			
Circuit Court Judges	478.013	108,000	108,000
Associate Circuit Judges	478.018	96,000	96,000
<u>Juvenile Officers</u>			
Juvenile Officer		40,256	40,676
Chief Deputy Juvenile Officer		34,182	34,602
Deputy Juvenile Officer Class I		30,215	30,635
Deputy Juvenile Officer Class 2		27,313	27,733
Deputy Juvenile Officer Class 3		24,712	25,132
<u>Court Reporters</u>	485.060	48,240	48,660
<u>Probate Commissioner</u>	478.266	108,000 *	108,000 *
	& 478.267		
Deputy Probate Commissioner	478.266	96,000 *	96,000 *
<u>Family Court Commissioner</u>	211.023	96,000 *	96,000 *
	& 487.020		
<u>Circuit Clerk</u>			
1st Class Counties	483.083	59,910	60,330
St. Louis City	483.083	99,847	100,267
Jackson, Jasper & Cape Girardeau	483.083	64,917	65,337
2nd & 4th Class Counties	483.083	53,829	54,249
3rd Class Counties	483.083	46,880	47,300
Marion-Hannibal & Palmyra	483.083	52,958	53,378
Randolph & Lewis	483.083	51,391	51,811

*Salaries are tied to those of Circuit and Associate Circuit Judges.

The salary adjustment contained in the pay plan applicable to other state employees generally for the fiscal year ending June 30, 2002 was extension, for a full year, of the \$420 annually that started in January 2001.

Schedule of Compensation as Required by Section 105.005 RSMo

<u>Office</u>	<u>RSMo Citation</u>	<u>Statutory Salary FY 2001</u>	<u>Statutory Salary FY 2002</u>
Elected Officials			
Governor	26.010	\$119,982	\$120,087
Lt. Governor	26.010	77,079	77,184
Attorney General	27.010	104,227	104,332
Secretary of State	28.010	96,350	96,455
State Treasurer	30.010	96,350	96,455
State Auditor	29.010	96,350	96,455
General Assembly			
Senator	21.140	31,246	31,351
Representative	21.140	31,246	31,351
Speaker of House	21.140	33,746	33,851
President Pro Tem of Senate	21.140	33,746	33,851
Speaker Pro Tem of the House	21.140	32,746	32,851
Majority Floor Leader of House	21.140	32,746	32,851
Majority Floor Leader of Senate	21.140	32,746	32,851
Minority Floor Leader of House	21.140	32,746	32,851
Minority Floor Leader of Senate	21.140	32,746	32,851
State Tax Commissioners	138.230	93,819	94,029
Administrative Hearing Commissioners	621.015	91,427	91,637
Labor and Industrial Relations			
Commissioners	286.005	93,309	94,029
Division of Workers' Compensation			
Legal Advisor	287.615	76,800 *	76,800 *
Chief Counsel	287.615	78,800 *	78,800 *
Administrative Law Judge	287.615	86,400 *	86,400 *
Administrative Law Judge in Charge	287.615	91,400 *	91,400 *
Director, Division of Workers' Compensation	287.615	93,400 *	93,400 *
Public Service Commissioners	386.150	93,819	94,029

	<u>RSMo Citation</u>	<u>Executive Level FY 2001</u>	<u>Executive Level FY 2002</u>
Statutory Department Directors			
Administration, Agriculture, Corrections, Economic Development, Labor and Industrial Relations, Natural Resources, Public Safety, Revenue, and Social Services	105.950	I	I
Probation and Parole	217.665	III	III
Chairman			
Board Members		IV	IV

*Division of Workers' Compensation salaries are tied to those of Associate Circuit Judges.

The salary adjustment contained in the pay plan applicable to other state employees generally for the fiscal year ending June 30, 2002 was extension, for a full year, of the \$420 annually that started in January 2001.

**Missouri Executive Pay Plan
Fiscal Year 2002**

Executive Level	Minimum	Maximum
I	\$75,948	\$111,156
II	\$69,504	\$101,604
III	\$63,636	\$92,928
IV	\$58,332	\$84,936

The Secretary of State is required by sections 347.141 and 359.481, RSMo 2000 to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one-time publishing of these notices are prescribed by statute. This listing is published pursuant to these statutes. We request that documents submitted for publication in this section be submitted in camera ready 8 1/2" x 11" manuscript.

"Please take notice that CVA Consulting, L.L.C., with a registered office at 10301 N.W. River Hills Court, Parkville, Missouri, has filed with the Missouri Secretary of State a Notice of Winding Up and Articles of Termination on December 7, 2001 and December 21, 2001 respectively. All persons who believe they have any claim against CVA Consulting, L.L.C. must present them in writing in accordance with the Notice of Winding Up. Your written claim must include the following information:

1. The nature and amount of the claim (e.g., money owed, contractual obligations, other damages);
2. A description and date of any written agreement involved; and,
3. The name, address and telephone number of a contact person who can verify your claim information.

Your written claim described above must be mailed to Pamela J. Venzian, 10301 N.W. River Hills Court, Parkville, Missouri, 64152. All claims against CVA Consulting, L.L.C. will be barred unless a proceeding to enforce your claim is commenced within three years after the publication of this notice."

NOTICE OF CORPORATE DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST CROWN LUMBER HOLDINGS, L.L.C.

On December 14, 2001, the sole member of Crown Lumber Holdings, Limited Liability Company voted to dissolve the L.L.C. A Notice of Winding Up was filed with the Missouri Secretary of State.

You are hereby notified if you believe you have a claim against Crown Lumber Holdings, Limited Liability Company, you must submit a summary in writing of the circumstances surrounding your claim to Mr. Jeffrey W. Sorensen, 598 N. Lake Winnebago Drive, Lake Winnebago, Missouri 64034. The summary of your claim must include the following information:

1. The name, address and telephone number of the claimant.
2. The amount of the claim.
3. Basis for the claim.
4. Documentation of the claim.

All claims against Crown Lumber Holdings, L.L.C. will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR WARD PARKWAY HOLDINGS, L.C.

The undersigned, for the purpose of providing notice of the dissolution of Ward Parkway Holdings, L.C., and the commencement of the winding up of its business and affairs, as required in the Missouri Revised Statutes, Section 347.137, hereby make, acknowledge and file the following Notice of Winding Up:

1. The name of the limited liability company is: Ward Parkway Holdings, L.C.
2. The articles of organization of Ward Parkway Holdings, L.C. were originally filed with the Missouri Secretary of State on March 24, 1995.
3. Ward Parkway Holdings, L.C. has dissolved and has commenced the winding up of its business and affairs.
4. Persons with claims against Ward Parkway Holdings, L.C. should present them in accordance with the following procedure:

A) In order to file a claim against Ward Parkway Holdings, L.C., a claimant must furnish the following information:

- i) The name and address of the claimant;
- ii) The amount of the claim;
- iii) The basis for the claim;
- iv) The nature of the claim;
- v) Documentation of the claim

B) The claim information required in (A) above, must be mailed to:

Stinson, Mag & Fizzell, P.C., 1201 Walnut St., Suite 2800, Kansas City, Missouri 64141

5. A claim against Ward Parkway Holdings, L.C. will be barred, pursuant to the Missouri Revised Statutes, Section 347.141, unless a proceeding to enforce the claim is commenced within three years after the publication of this Notice of Winding Up.

The undersigned, for the purpose of providing notice of the dissolution of Ward Parkway Holdings, L.C., and the commencement of the winding up of its business and affairs, do hereby execute this Notice of Winding Up, this 20th day of December, 2001, and do hereby affirm, under penalties of perjury, that the facts stated herein are true and that the undersigned are duly authorized to execute this Notice of Winding Up.

DAVE G. RUF, JR., Member-Manager
PAUL A. HUSTAD, Member-Manager
BURNS & MCDONNELL ENGINEERING
COMPANY, INC, Member-Manager
Dave G. Ruf, Jr., President and C.E.O.

JOEL A. CERWICK, Member-Manager
MARK H. TAYLOR, Member-Manager

OFFICE OF ADMINISTRATION
Division of Purchasing

BID OPENINGS

Sealed Bids in one (1) copy will be received by the Division of Purchasing, Room 580, Truman Building, PO Box 809, Jefferson City, MO 65102, telephone (573) 751-2387 at 2:00 p.m. on dates specified below for various agencies throughout Missouri. Bids are available to download via our homepage: www.moolb.state.mo.us. Prospective bidders may receive specifications upon request.

B1E02164 Meat Product: Turkey Medallions 1/16/02;
B3E02120 Janitorial Services 1/16/02;
B1E02139 Automated Headspace Sampler 1/17/02;
B1E02170 Door Monitoring System 1/17/02;
B1E02163 Water Quality Monitoring Equipment 1/18/02;
B3E02110 Janitorial Services 1/18/02;
B1E02168 Mobile Office 1/22/02;
B1E02167 Frozen Food: Danish 1/24/02;
B3Z02109 Medical Laboratory Services 1/24/02;
B2Z02038 Online Legal Research Subscription Services 1/25/02;
B3Z02088 Stay At Home Parent Program 1/27/02;
B3Z02118 Missouri Senior Rx Program 1/31/02;
B3E02125 Cash Farm Lease-Moberly Corrections Center 2/1/02;
B3Z02111 Janitorial Services 2/8/02;
B3Z02048 Exhibit: Mobile-“Cave Caravan” Design 2/15/02.

It is the intent of the State of Missouri, Division of Purchasing to purchase the following as a single feasible source without competitive bids. If suppliers exist other than the one identified, contact (573) 751-2387 immediately.

MAGIC Help Desk Software & Maintenance Support Services, supplied by Network Associates, Inc.

1.) Gaming Machine Testing Devices, supplied by Kobetron, Inc.
2.) Building Blocks of Missouri (Prenatal & Early Childhood Nurse Home Visiting) Southeast Region Expansion, supplied by Southeast Missouri Home Health.

Dental Services, supplied by Barnes-Jewish Hospital Dental Group.

James Miluski, CPPO,
Director of Purchasing

This cumulative table gives you the latest status of rules. It contains citations of rulemakings adopted or proposed after deadline for the monthly Update Service to the *Code of State Regulations*, citations are to volume and page number in the *Missouri Register*, except for material in this issue. The first number in the table cite refers to the volume number or the publication year—25 (2000), 26 (2001) and 27 (2002). MoReg refers to *Missouri Register* and the numbers refer to a specific *Register* page, R indicates a rescission, W indicates a withdrawal, S indicates a statement of actual cost, T indicates an order terminating a rule, N.A. indicates not applicable and RUC indicates a rule under consideration.

Rule Number	Agency	Emergency	Proposed	Order	In Addition
OFFICE OF ADMINISTRATION					
1 CSR 10	State Officials' Salary Compensation Schedule24 MoReg 2535
					.25 MoReg 2478
					This Issue
1 CSR 50-3.010	Missouri Ethics Commission26 MoReg 2219		
DEPARTMENT OF AGRICULTURE					
2 CSR 10-5.010	Market Development26 MoReg 1305R			
		.26 MoReg 1305			
2 CSR 10-5.015	Marker Development26 MoReg 2217			
2 CSR 30-2.010	Animal Health26 MoReg 225726 MoReg 2263		
2 CSR 30-2.040	Animal Health26 MoReg 225726 MoReg 2265		
2 CSR 30-6.020	Animal Health26 MoReg 225826 MoReg 2267		
2 CSR 90-10.012	Weights and Measures27 MoReg 7		
2 CSR 90-10.013	Weights and Measures27 MoReg 9		
2 CSR 90-10.020	Weights and Measures27 MoReg 9		
2 CSR 90-10.040	Weights and Measures27 MoReg 11		
2 CSR 100-10.010	Weights and Measures26 MoReg 162326 MoReg 2416		
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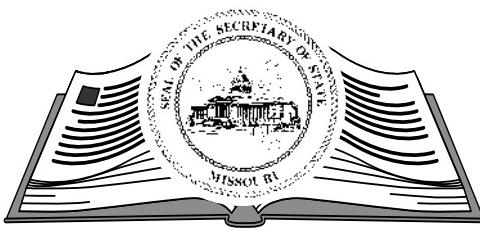
WEIGHTS AND MEASURES

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